

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS
Honolulu, Hawaii

September 23, 2005

Board of Land and Natural Resources
State of Hawaii

Subject: Request for authorization to institute immediate natural and cultural protection, safety and user conflict mitigation measures for recreational and commercial activity through issuing permits, approval of proposed administrative rule changes governing the West Hawaii Ocean Recreation Management Area, Kealahou Bay Ocean Waters and Kealahou Bay Marine Life Conservation District and authorization to take to rule changes to public hearing, investigation and implementation of facility improvements, funding of an on-site ranger(s), initiation of a "Makai Watch" program with appropriate partners, reconvening the intradepartmental working group, issuing of an RFP for the rental of kayaks at Napoopoo Landing, monitoring proposed actions and reporting back to the Board.

INTRODUCTION:

Kealahou Bay is a cultural and natural resource treasure. Besides its importance to Hawaii's history, its abundant aquatic life and natural beauty make it a jewel to residents and visitors alike. In the past, Kealahou has been the source of controversy and concern. Attempts to manage the area and its resources have encountered problems and some opposition. The Department of Land and Natural Resources has been bringing together the area's constituents to begin a process to better manage and protect Kealahou.

On any given day people flock to Kealahou to take part in a wide variety of activities. In some cases, these activities are able to coexist or even complement each other. However in recent years a rise in the amount of users and uses has led to conflicts, both land and water-based. Discovering what these many uses and who these users are, is the first step in developing management measures, which will help alleviate these user conflicts.

The following is a list of present activities:

- People who drive through
- People who stop to use the restrooms
- People who picnic in the pavilion
- People who drink in the pavilion
- People who use the pavilion for large gatherings – parties, meetings
- People who hang out in the parking lot
- Sightseers who look at and/or take pictures of the ocean and the heiau
- Sunbathers who use small pockets of sand among the boulders or the top of the retaining wall

- Snorkelers
 - Scuba divers
 - Kayakers, commercial and non-commercial
 - One-person outrigger canoe paddlers
 - Campers (or homeless) who come to the park for fresh water
 - Pole fishermen
 - Parking lot vendors
 - Swimmers
 - Swimmers who try to interact with the dolphins
 - Ocean swimmers who swim for exercise
 - Body boarders
 - Bodysurfers
 - Akule fishermen
 - Biplane pilot and passengers sightseeing over the bay
 - Hikers
 - Dolphin and whaler watchers
 - Bird watchers
- (Park Plan)

Other uses include:

- Cultural practitioners
- Cruise boats and other commercial vessels
- Recreational boaters
- Fish collectors
- Beach boys (kayak helpers)
- Horseback riders
- Thrownet fishers

Current issues at Kealakekua Bay, which are of immediate concern for the community, include:

- Dolphin harassment
- Possible impacts to reef/environment
- Possible impacts to historic sites
- Napoopoo pier (illegal activity/closing of the gate/kayak helpers etc.)

This submittal is a step in developing management tools to address these activities and issues.

Land Board Hierarchy of Uses Policy:

Kealakekua Bay's abundance of natural and cultural resources is undisputed. It is this abundance that has made the bay and surrounding land a popular destination for centuries. As the Island of Hawaii's population and the tourism industry grows, this popularity and desire to see and be immersed in these natural and cultural resources will increase. It is DLNR's responsibility to balance these interests to fulfill its responsibility to the resource and people of Hawaii.

In January 1998, the Board of Land and Natural Resources adopted a policy and has directed the Department of Land and Natural Resources to implement the following hierarchy of uses.

The Department, when considering commercial activity proposals or management actions on state owned lands and waters, will use the following hierarchy of priorities:

- a. The Natural or Cultural Resource - The highest priority should go to the conservation of the resource. Only if an activity can be done in a way that does not unduly damage the resource, should it be allowed.
- b. The General Public - If use or activity by the public can be done without undue damage to the resource, it should be the next priority.
- c. Commercial Activities - Commercial activities should be considered only if their impacts do not impinge on the resource, #a above, or use by the general public, #b, above.

If public and commercial activities are occurring, and resource impacts indicate that restrictions or controls need to be imposed, these should first be levied on commercial operators. The general public is the last group to have restrictions and controls imposed on them.

The policy suggests commercial activities are possible (as long as they do not unduly damage the resources). It also suggests if the resources are unduly damaged, the commercial activities will be the first to be further restricted or eliminated.

DLNR strives to promote responsible use, understanding and respect for Hawaii's natural and cultural resources. DLNR is constantly looking for and implementing ways to serve the public (better, faster, cheaper, more efficient, cost-effective, etc) and include the public by seeking their assistance in the decision-making and implementation processes.

Thus, in this submittal the Department is investigating ways in which to manage Kealahou Bay's ocean and land based activities in a way that the "Hierarchy of Uses" is addressed and negative impacts to resources and user conflicts are avoided.

Coastal Policy

Earlier this year the Board of Land and Natural Resources approved in concept a process to lead to an overall Statewide Comprehensive Coastal Policy. The Policy's overall goal is to foster and improve the overall management of coastal resources. This effort is intended to produce a unified vision for future actions by government as a whole.



PHOTO 1

Aerial view of Kealakekua Bay looking north.
(Photo from Macdonald et. al., 1983: 371)

Rather than confront the daunting task of an overall Comprehensive Coastal Policy in a single effort, the proposed policy was broken down into component “chapters” with the respective divisions and stakeholder groups addressing each chapter.

The Land Board has approved in concept four initial “chapters;” three of these are directly linked to the Department’s actions and proposed management at Kealakekua Bay. Thus, this board submittal is consistent with the intent of the Board of Land and Natural Resources previous policies in concept that deal with the department’s overall “Coastal Policy.”

Marine Protected Area Policy

The department’s Coastal Policy on Marine Protected Areas and Marine Managed Areas, presented by the Division of Aquatic Resources, set forth a need and desire for integrated and formalized resource protection for Hawaii’s marine environment.

In the past, DLNR has addressed management issues at some of the marine managed areas and adapted their management on a case-by-case basis using best available science and community input. Although adaptive management will always be needed on a site-specific basis, the department recognized the broader concerns and decided that the entire system of marine managed areas would benefit from an evaluation.

The Board approved the department’s proposed definitions of marine protected areas and marine managed areas and approved, in concept, the suggested framework presented. Further, the Board authorized the Department to conduct a public process, including public meetings, to seek additional input, with significant stakeholder participation, into the proposed definitions and marine managed area framework.

Kealakekua Bay has already been identified and established as a marine protected area (it is one of the state’s Marine Life Conservation Districts.) Thus, as a Marine Protected Area, Kealakekua will further benefit from the progress made in addressing these important issues related to the marine environment. This submittal will further encourage this process and reinforce the importance of the integrated and formalized management of Hawaii’s marine environment.

Enforcement Policy

The department’s Coastal Policy on Enforcement, presented by the Division of Conservation and Resource Enforcement, addressed the idea that instead of focusing solely on catching people doing inappropriate behavior, DLNR believes that through added outreach, education and cooperation with other agencies, the department should prevent incidents from occurring before enforcement action is needed. The department’s preference is to foster voluntary compliance and prevent violations from occurring, before they lead to enforcement action.

When a violation occurs, the damage to our natural and cultural resource may make recovery difficult or, in some cases, impossible. The department believes that the first step in preventing these violations from occurring is to educate the public about our natural and cultural resources.

Likewise, the Enforcement policy suggests expansion of the department's outreach and education efforts as well as an expansion of the department's Mauka-Makai Watch program. Finally, the enforcement policy recommended continued partnerships with other constituencies in outreach and resource protection and formalization of cooperative agreements between DLNR and other agencies. Kealakekua Bay offers a great opportunity to expand these programs and to use these programs to help in the management and protection of the areas natural and cultural resources.

Ocean Recreation Policy

The department's Coastal Policy on Ocean Recreation recommends actions to take proactive approaches to ocean recreation activities and minimize and/or avoid user conflicts. The underlying premise of this policy is the protection and preservation of the natural and cultural resources. The Department recognizes growing interest in ocean recreation uses, whether traditional and cultural, recreational and/or commercial. Growing interest could result in ocean recreation user conflicts. It is the intent to minimize these conflicts.

The Board authorized the department, through the Division of Boating and Ocean Recreation, to conduct a public process, including public meetings and discussions with user and/or advisory groups, to seek additional input, with significant stakeholder participation, into management opportunities to minimize ocean recreation user conflicts and report back to the BLNR on the status of this effort.

In addition, the BLNR authorized the Department, through the appropriate division, depending on jurisdiction of the area, to prepare permits/concession agreements, with terms of one year or less as immediate management tools to avoid or mitigate ocean recreation user conflicts.

Finally, in an effort to avoid or mitigate conflicts, the Board authorized the Division of Boating and Ocean Recreation to initially focus on priority issues such as surf instruction/schools, kayaking, snorkel/dive and related operations in areas where conflicts are occurring or could occur. Kealakekua Bay has been identified as a priority location.

Although the issues are identified as "user conflicts" throughout the Coastal Policy, the recommendations of the department are intended as a means in which the department can avoid/prevent user conflicts. The context is to protect the resources, while maximizing user enjoyment.

BACKGROUND:

The history of Kealakekua Bay has been studied and documented for years. Thus, in this submittal we will use information taken from several reports and plans that have been compiled and written over the years. These documents present a representative account of what has happened in the past and how issues have been dealt with in the past. The documents used consisted of the documents listed below. After the citation, in parentheses, is the reference, which will be used throughout this submittal to document the source of the information.

- Human Activities in Marine Protected Areas-Impact on Substrates, Final Report. Kim N. Holland & Carl G. Meyer, September 2003. (Human Activities in MPAs)
- Report to the Twenty-First Legislature 2002 Regular Session Requesting an Investigation of the Impacts of Increased Public Access on Kaawaloa and Kealahou Bay, Island of Hawaii. Department of Land and Natural Resources, December 2001. (Impacts by Public Access)
- Diver Impacts on Coral Reefs at Kealahou Bay, Hawaii. Brian T. Tissot & Leon E. Hallacher, March 2000. (Diver Impacts)
- Kealahou Bay State Historical Park Conceptual Plan. Belt Collins Hawaii, August 1997. (Park Plan)
- Hazard Assessment and Recommendations for Napoopoo Landing at Kealahou Bay Island of Hawaii. Ralph S. Goto, March 2002. (Hazard Assessment)

HISTORY:

Location

Kealahou is located in the district of South Kona, along the southwestern coastline of Hawaii Island and approximately 12 miles south of Kailua-Kona. Kealahou refers to an *ahupuaa* (traditional land division), a town along Mamalahou Highway, and a state historical park. Kealahou Bay State Historical Park is comprised of the *makai* portion of the Kealahou and Kaawaloa *ahupuaa* which surround the bay.

Located on the slopes of Mauna Loa, Kealahou Bay is sheltered by the 600-foot high, steep *pali* known as Pali Kapu o Keoua. Surrounding the one-mile wide bay are the rich agricultural lands that comprised the historic Kona Field system and the coffee fields of Kona today. Although there are no streams in the area, numerous springs provide a source of freshwater.

Settlements lined the bay in the pre-contact period, as do the small residential communities of Napoopoo and Keei today. Kealahou is considered one of Hawaii's most significant historical and cultural places.

Kealahou was selected by the *alii* as one of the seven royal centers of Kona in the 1700s because of its sheltered bay and abundance of natural resources.

Kealahou was the site of the first extensive interaction between the Hawaiians and Europeans when Captain Cook anchored in Kealahou Bay for a month in January 1779. Soon, Kealahou became known as a provisioning port for ships involved in exploration, whaling, and trans-Pacific trade.



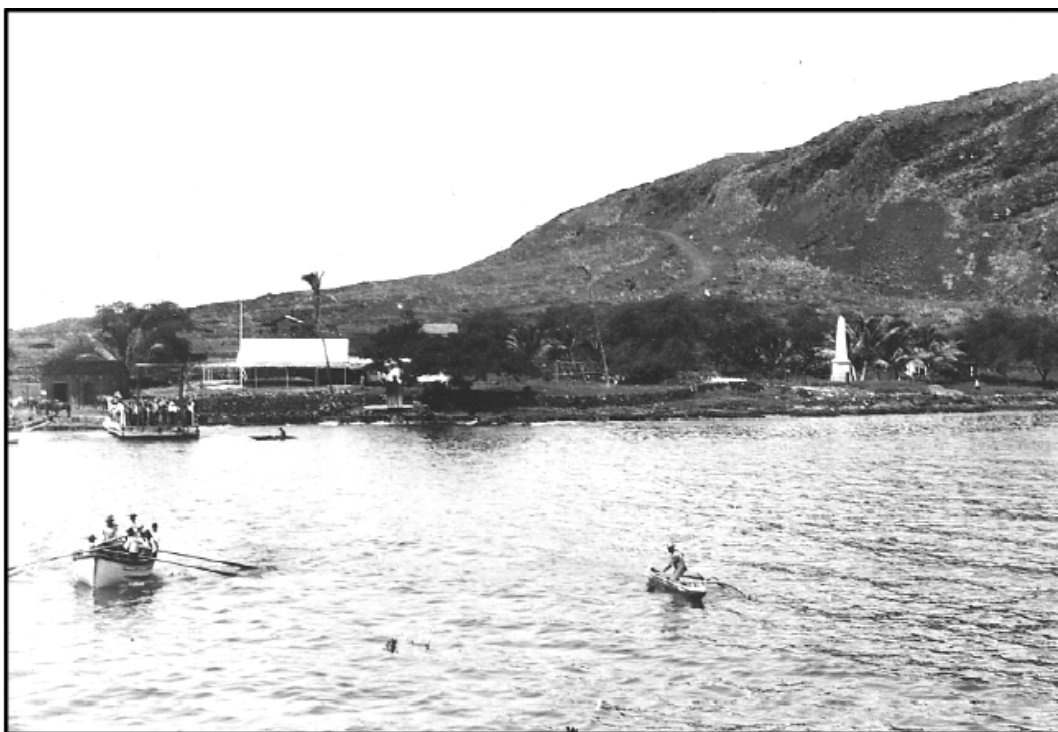


PHOTO II

Wharf at the end of Ka'awaloa Road, circa 1890s, used to load cattle onto boats in the bay. Captain Cook Monument is to the right and the building is the Barrett Hotel.

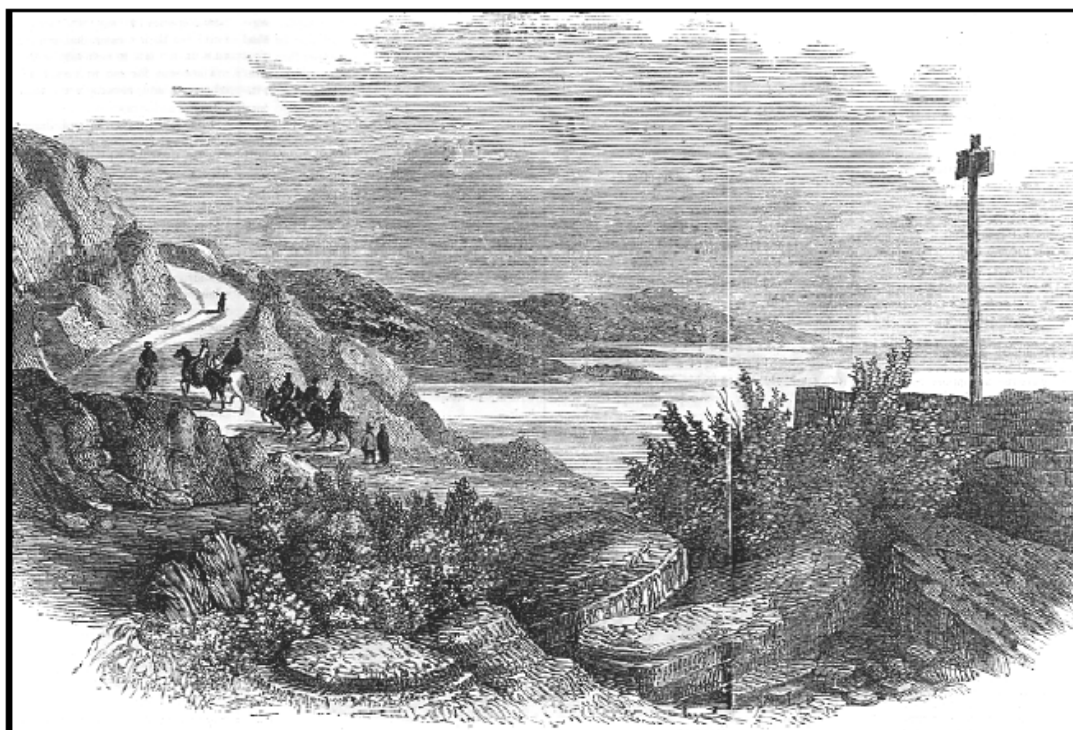


PHOTO III

Puhina O Lono Heiau (post to the right) and the Ka'awaloa Road, circa 1850s.

About 40 years after Cook's visit, the missionaries arrived and established one of the earliest mission stations in Hawaii at Kaawaloa. By the late 1800s, traditional fishing and farming were giving way to ranching and coffee. Today, the remaining archaeological sites and historic buildings reflect the long and diverse cultural history of Kealahou. (Impacts by Public Access)

Kealahou Bay

Kealahou Bay State Historical Park partially surrounds Kealahou Bay, noted for its natural beauty and defined by its sparkling, clean waters and exceptional underwater visibility. From Kaawaloa south to Palemano Point, the bay measures about one and one-half miles in length and about one mile in width.

While ancient settlements depended upon this bay as a source for both food and transportation, today it is a protected sanctuary for a spectacular diversity of marine life. The 315-acre bay is designated a State of Hawaii Marine Life Conservation District (MLCD). Despite its limited access, thousands of visitors each year travel to Kealahou Bay, and especially Kaawaloa Cove, to view its extraordinary marine treasures.

Although the portion of Kealahou Bay near Napoopoo contains coral reefs, it is the highly developed reefs of Kaawaloa Cove that offer the best diversity of corals, fish and other marine life. The cove is a protected site in the lee of the pali, and is popular among scuba divers and snorkelers. Beyond this cove the bottom drops abruptly to depths of 100 feet and greater; for this reason, snorkelers are concentrated primarily in the cove and on the rim of the bay where they can touch or see the bottom. This is also where the most marine life is concentrated.

Kealahou Bay is probably the most sheltered natural bay on the island of Hawaii. The abrupt near shore dropoff was also part of Kealahou Bay's attraction as an anchorage for large sailing ships. Traditionally, Kaawaloa Cove (in the northwest corner of the bay) was used as an all weather anchorage; that ended in 1969 when the bay was designated as a MLCD. Current regulations prohibit anchoring in all areas of Subzone A, which includes Kaawaloa Cove, except for established moorings.

Surf generated by the prevailing winds breaks throughout the year at the edge of the sandbar at Napoopoo Beach. These shorebreak waves are usually small, spilling-type waves averaging from one to three feet in height. Larger surf heights are unusual, but may occur during severe tropical storms and hurricanes. Surf from these sources, however, is infrequent, and produces steep, plunging types of waves. Larger surf may also occur during both the winter and summer months during high surf episodes. For example, a high surf summer swell occurred during June 1995, generating surf in all corners of the bay.

Beyond the ten fathom line, the ocean bottom drops off sharply - at times quite precipitously. Near shore, the bottom is covered with an assortment of boulders or, near the lava bluff that forms it, sharply angular fragments. The boulders increase in size as one progresses seaward. While the coral cover is nearly 100 percent near the ten fathom line, there seems to be very little coral or other marine life on the steep outer slopes. (Park Plan)

Kaawaloa

Kaawaloa is a flat, fan-shaped lava peninsula near sea level which rises gradually to the edge of Pali Kapu O Keoua. These forty acres of land define the northwest side of Kealakekua Bay. During ancient times this area was largely devoid of vegetation and therefore quite hot, but today kiawe trees provide much needed shade over the southeastern portion of the site.

The primary entry to Kaawaloa is by foot down Kaawaloa Road. Now badly deteriorated, this roadway descends down the pali into the flat peninsula where it is defined by old stonewalls and ends at Kealakekua Bay. A number of footpaths extend into the peninsula, passing through openings in old stonewalls. Vehicles access Kaawaloa from Keopuka along the coastal road.

The area's most dominant historical feature is the Cook Monument, a tall white pedestal along the shoreline which is visible throughout Kealakekua Bay.

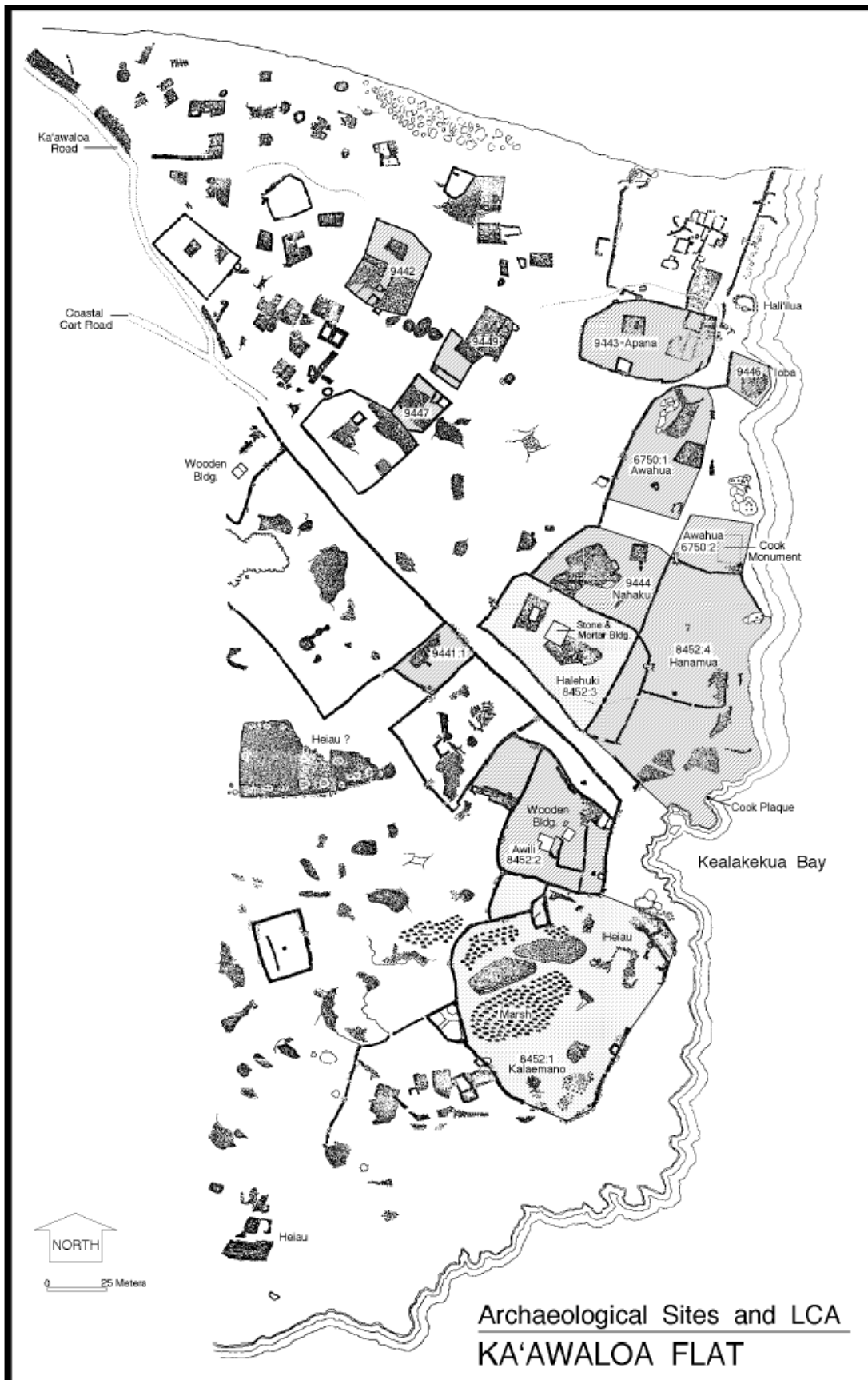
The shoreline of Kaawaloa is a lava ledge with a number of small calcareous sand and coral rubble storm beaches. These beaches were created when storm surf deposited material inland of the normal shoreline and are a testament to the severity of the occasional large Kona storm. Typically these storm beaches do not attract ocean recreation users because they are located away from the water's edge and are usually surrounded by rock. Views of the bay, the pali, and Napoopoo can be seen from the storm beaches along Kaawaloa's ocean edge. (Park Plan)

Kaawaloa Cove

Kaawaloa Cove is located at the intersection of Pali Kapu o Keoua and the Kaawaloa peninsula. It is a protected site in the lee of the pali and provides excellent snorkeling opportunities on a small, but well developed coral reef. Beyond the cove, the bottom drops abruptly to depths of 100 feet and greater. For this reason, snorkelers are concentrated primarily in the cove and on the rim of the bay where they can touch the bottom or at least see it. This is also where most of the marine life is concentrated anyway. The abrupt nearshore drop off was part of Kealakekua Bay's attraction as an anchorage for large sailing ships, but floating over deep water makes most snorkelers uncomfortable, and they rarely stray beyond the drop.

Kaawaloa Cove is the most heavily used site at Kaawaloa, attracting snorkelers, scuba and scuba divers who are transported to Kaawaloa Cove on commercial tour boats, or who transport themselves on kayaks. The tour boats come from Keauhou and Kailua, and the kayakers come from across the bay at Napoopoo Landing. Both come daily. Snorkelers also include: members of horseback riding tours, hikers, residents who come in their own boats, residents and visitors who come in four-wheel drive vehicles, and residents who swim, bodyboard, kayak and canoe from Napoopoo. (Park Plan)

The impacts on the archaeological and cultural resources of Kaawaloa are more subtle. At present, the greatest impact is from the frequent commercial horse tours and the occasional 4WD vehicle. It is possible to regulate these current users through permits. State Parks has raised concerns about the potential for uncontrolled visitation by land if development occurs along the park boundaries. It is likely that most of these visitors will be traversing Kaawaloa Flat to go snorkeling at Kaawaloa Cove, which may result in impacts to both the cultural and marine resources. (Impacts by Public Access)



Pali Kapu O Keoua

Pali Kapu O Keoua is a steep, 600-foot high sea cliff, approximately 1.5 miles long, and is the most dominant geological feature in Kealahou Bay. The top of the pali is largely overgrown with tall grass except in several places where cattle graze. Views of the bay from this cliff are spectacular; one sees the entire bay from its northern inception at Kaawaloa to its southern tip at Palemano Point.

This perspective is rarely seen because the area's remoteness and lack of accessibility discourage most hikers from walking there. Survey maps, however, describe the pali as covered by remnants of ancient walls from the Kona field system.

Earthquakes in 1950 and 1951 apparently sheared off much of the cliff face, sending major rockslides into the ocean below. Prior to these earthquakes, local residents report that a narrow shelf ran along the base of the pali which was exposed at low tide. This shelf provided a path between Napoopoo to Kaawaloa, and allowed fishing and gathering activities from the base of the cliff. Above the bay, the vertical edge of the northern portion of the pali cliff is marked by volcanic caves, used as sacred burial sites by the Hawaiians. (Park Plan)

Napoopoo

The Napoopoo portion of the park sits below the pali, a relatively small and essentially flat piece of land sandwiched between Kealahou Bay, the cliff, and Napoopoo Village. Much of the land is slightly elevated above sea level, providing opportunities for views of the bay. Views from certain locations are currently blocked by thick plant growth or by residential development sited along the ocean edge.

For many years, Napoopoo was fronted by a narrow, calcareous sand beach which extended from the base of the pali to the base of Hikiau heiau. Because the island's shoreline is typically rocky and white sand beaches are rare, Napoopoo Beach was one of the most popular beaches in Kona. It is now completely covered with boulders.

Most local residents attribute the boulder deposition to the inundation of the beach by severe storm surf. Apparently, the process began with Hurricane Nina in 1957, progressed over a number of years, and ended when Hurricane Iniki covered the remaining sand with boulders in 1992.

Other local residents believe that the 1950 and 1951 earthquakes produced substantial slide material, which was moved by storm surf from the base of the pali onto the beach. It is also likely that land subsidence related to volcanic activity contributed to the loss of Napoopoo Beach.

Although boulders cover the upper regions of the beach, a shallow sandbar that fronts the beach is still rock free, and waves continue to break there. These waves, once popular with bodysurfers and bodyboarders, now wash into boulders instead and create a strong backwash in the shorebreak.

Several features associated with the area's history are apparent to even the casual explorer. The first is a small pond positioned behind the former beach. Other visible remnants of Napoopoo's past are stonewalls and cattle pens. (Park Plan)

Napoopoo Beach

Napoopoo Beach and its adjoining community park have been focal points on the Kealakekua Bay shoreline for many years for both visitors and residents. Napoopoo Beach was formerly fronted by a small, narrow calcareous sand beach that extended from the base of the pali to the base of Hikiau heiau. The sand formed a barrier beach between the ocean and the pond or muliwai immediately inland. Muliwai are brackish water ponds on the shoreline that are combinations of salt water from the ocean and fresh water runoff from the land.

Napoopoo Beach is now covered entirely with boulders. Informants in the community are not in agreement on exactly when the boulders began to arrive and where they came from, although they all attribute the boulder deposition to the inundation of the beach by severe storm surf. (Park Plan)

Napoopoo Landing

Napoopoo Landing consists of a concrete wharf that was built into the shoreline rocks in the early 1900s. Some informants know this site as Kiloa which means "to look out or to look afar" and the unpaved parking lot adjoining it as Kekoa which means "the coral". The wharf was used to load and unload lighters that serviced interisland steamers anchored offshore.

Today the wharf and its parking lot are used as an informal community beach park. Some of the former beach goers who used Napoopoo Beach have relocated here, including swimmers and snorkelers, but the wharf is used primarily as a kayak launching site for kayak trips from Napoopoo to Kaawaloa.

Napoopoo Landing is also used for negative passive activities such as drinking and doing drugs, both of which have given the area a bad reputation with the community. Many parents feel that the activities and the individuals who practice them are undesirable and that they are a bad influence on their children who swim at the wharf. The community and other commercial kayak vendors are also concerned with the commercial kayak vendor who has no permits to operate on public property and who has taken a proprietary position at the wharf. (Park Plan)

In March of 2002 DOBOR contracted Ralph S. Goto to prepare a hazard assessment of Napoopoo Landing. The resulting document "Hazard Assessment and Recommendation for Napoopoo Landing at Kealakekua Bay Island of Hawaii" outlines issues facing the landing and recommendations to improve its use.

The primary man-made hazard is the landing itself. Once used as a wharf and warehouse for boats loading and unloading supplies, the landing was built in the mid 1900's, and is no longer used or maintained for these purposes. Because of its original function, both individual recreational users and commercial groups use the landing as a site for launching small watercraft, including kayaks.

Risks associated with the man-made landing include falling, slipping, or diving off into the ocean, slipping on the uneven surface of the landing, and injuries associated with the launching and retrieval of boats, kayaks, or other watercraft. Bone and joint injuries, cuts and lacerations, strained or sprained muscles, and immersion related injuries are all possible. The wall at the seaward end of the landing is a popular launching site for jumping and diving into the ocean. There is potential for serious injury to occur as a result of striking the bottom or coral on the bottom.

There are no lifeguards or emergency facilities in the area. There are comfort stations located in the adjacent state park; however, there are no emergency phones or warning signs posted. The closest emergency responders would be dispatched from County Fire Station 6 in Captain Cook, approximately 15 minutes away.

The following recommendations are made with a limited understanding of current jurisdiction and regulatory issues, and without opinion relative to the practice of observing and interacting with specific marine life, i.e. dolphins, present in Kealahou Bay. The Napoopoo Landing and the adjacent ocean waters present hazards associated with the recreational activities that occur there, i.e. swimming, kayaking, snorkeling, scuba diving, fishing and jumping or diving into the ocean.

Because these activities cannot be prohibited, or if prohibited, difficult to enforce, prevention strategies (opposed to restrictive efforts) should be implemented. This could be done in the form of interpretive displays and warning signs, the presence of docents or volunteer guides recruited from the local community, and the implementation of an emergency response plan that would include emergency communications and basic ocean rescue equipment.

Interpretive displays have been used effectively in national, state and county parks and facilities. Volcanoes National Park and Kahanu Beach Park are two examples on the Big Island where displays have been used to inform visitors as well as provide safety information.

Standardized Ocean Safety Warning signage has been developed by and is available from the Hawaiian Lifeguard Association. This signage has been used in the State of Hawaii by government agencies and beachfront properties to warn of hazardous conditions that occur in the near shore environment. Use of these standardized warning signs is highly recommended.

To augment the use of the interpretive displays and warnings, recruitment and training of local residents to act as docents could be considered to ensure a commitment to preserving and protecting the area's natural resources.

A simple emergency response plan to include volunteer first responders, emergency telephone or radios to activate EMA, and basic rescue equipment (flotation/rescue devices) and first aid supplies can be implemented with minimal initial expense. The cost benefit of this recommendation can be determined by comparing the cost of defending an adverse legal action with the cost of setting up and sustaining an effective system.

These recommendations are presented as suggested strategies to prevent and respond to injuries or situations that may occur at Napoopoo Landing and its adjacent ocean waters. The actual decision to implement these recommendations rests solely with the Department of Land and Natural Resources. (Hazard Assessment)

Marine Life

The biological picture of Kealakekua Bay is one in which the vast bulk of the living organisms is concentrated along a shallow rim of the bay. Marine life is enhanced by the clear waters and exceptional visibility. While marine life is composed primarily of corals, fishes, and sea urchins, with algal material found on intertidal rocks, there seem to be very little coral or other organisms growing on the steep outer slopes with its generally sandy substrate. This means that marine plant and animal communities will in all likelihood be quite responsive to modifications to land use along the bay. (Park Plan)

Naia (Spinner Dolphins)

Several research studies have been conducted on the pod of spinner dolphins in Kealakekua Bay in an attempt to understand the impact of human activity on the behavior of the dolphins who frequent the bay for resting, social interaction, and care of the young.

Researchers believe that they can ignore outside distractions when they are busy feeding, but can be disturbed if approached too quickly or too close. When disturbed, the dolphins respond with evasive action that disrupts their pattern of feeding or resting.

However, researchers also point out that the dolphins may exhibit subtle shifts in behavior in response to humans that is not always recognized as an impact to their health or social interaction. (Park Plan)

While the aquatic biologists do not see major impacts to the coral and fish of Kaawaloa, they have raised major concerns about the *naia* in Kealakekua Bay and the difficulties in enforcing human activity with these dolphins. Staff has not observed adverse impacts to the marine resources being caused by the current level of visitation, but believes that there is a need for visitation to be monitored more systematically, regulated through rules and permits, and enforced. (Impacts by Public Access)

SCIENTIFIC REPORTS & MONITORING:

Several scientific reports and studies have addressed the marine life of Kealakekua Bay. These reports give insight into how government and other entities may better manage the aquatic resources of Hawaii.

There is an ongoing EPA funded study, which is examining aspects of water quality at Kealakekua Bay and Honokohau Bay. - Assessment of Anthropogenic Impacts on Two Coral Reef Sites on the Big Island of Hawai'i: Honokohau Bay & Kealakekua Bay in West Hawai'i. M. Parsons, W. Walsh, J. Michaud, L. Hallacher, K. Duarte, R. Okano.

There are also two ongoing monitoring programs which track a number of parameters (fish, invertebrates, benthic cover, etc.) at three sites in and around Kealahou Bay (Keopuka, Kaawaloa Cove, Keʻei) - Division of Aquatic Resources Statewide Coral Reef Monitoring Program. W. Walsh, I. Williams (NOAA funded) and Integrated Monitoring of Coral Reefs of West Hawaiʻi. I. Williams, W. Walsh (HCRI funded).

Human Activities in MPAs

The Human Activities in MPAs report by Holland and Meyer investigated and compared how human activities such as snorkeling and SCUBA activities affect various MPAs across the state. Kealahou Bay was one of the four MPAs studied.

Introduction

Hawaii marine protected areas (MPAs) are utilized by hundreds of visitors every day (Human Activities in MPAs) yet there have been very few attempts to assess whether or not the existing levels of human activity negatively impact the ecosystem contained within MPA boundaries. The primary concern is that frequent physical contact with the substrate will result in extensive damage to corals and other fragile habitats (Davis, 1977, Harriot et al. 1997, Rinkevich 1994, Van Treeck & Schuhmacher 1998, Roupheal & Inglis 2001, Tratalos & Austin 2001). The most common recreational activities occurring in Hawaii MPAs are snorkeling & SCUBA diving (Human Activities in MPAs). These activities have been implicated in coral damage in other geographic regions (Riegl & Velimirov 1991, Rinkevich 1994, Hawkins & Roberts 1992, Kimani 1995, Gaudian & Medley 1995, Allison 1996, Hawkins et al. 1997, Van Treeck & Schuhmacher 1998, Plathong et al. 2000, Roupheal & Inglis 1997, 2001, Tratalos & Austin 2001).

Previous studies of the impacts of recreational activities on coral reefs consisted of three main types; 1. Benthic surveys where coral damage was compared between high and low traffic areas (Riegl & Velimirov 1991, Hawkins & Roberts 1992, Gaudian & Medley 1995, Allison 1996, Hawkins et al. 1997, Jameson et al. 1999, Gaudian & Medley 1995, Allison 1996, Hawkins et al. 1997, Jameson et al. 1999, Plathong et al. 2000, Tratalos & Austin 2001, Tissot & Hallacher 2000, Zakai & Chadwick-Furman 2002), 2. Direct impact ('real time') studies where people engaged in specific activities were individually followed to determine the frequency and extent of damage to corals (Talge 1990, Harriot et al. 1997, Medio et al. 1997, Roupheal & Inglis 1997, 2001, Walters & Samways 2001, Zakai & Chadwick-Furman 2002), and 3. Experimental manipulations where the resilience of different coral species to physical contact was evaluated using simulated trampling, mechanical strength testing and tissue regeneration and fragment survival experiments (Liddle & Kay 1987, Riegl & Riegl 1996, Rodgers et al. 2003).

Kealahou Bay MLCD

Kaawaloa Cove was the most intensively used area within Kealahou Bay MLCD and activities in this area were dominated by snorkeling. The habitat in this area consisted of a 20-30m wide shelf of uncolonized lava rock and boulders in shallow (<1m) areas, and high coral cover in deeper areas. The edge of the shelf was bounded by a reef wall of high coral cover descending steeply to a sand bottom at 30-40m depth.

Ninety-five percent of all activities at Kaawaloa Cove occurred within an area of 21,220 m² (1.7% of the total Kealakekua Bay MLCD area) of which approximately 12,680 m² was coral habitat (4.0 % of the total area of coral habitat within Kealakekua Bay MLCD).

Snorkeler movements were oriented along the shelf & reef wall and were most concentrated in a 3,500 m² area adjacent to the Captain Cook monument. There were two main entry and exit points for shore-based activities at Kaawaloa Cove (Captain Cook Monument dock & kayak landing area).

Boat-based activities were from a large (20m, 100 passenger capacity) catamaran tied up to a permanent mooring in Kaawaloa Cove, and a number of rigid-hulled inflatable (7-9 m, 6-16 passenger) that were brought in to the edge of the reef shelf but did not anchor. One SCUBA and 4 SNUBA divers tracked at Kaawaloa Cove all originated from the large catamaran and followed a fixed route in an area of high coral cover not utilized by most snorkelers.

The majority (>75%) of substrate contacts observed at Kaawaloa Cove occurred where shore-based snorkelers entered and exited the water. Substrate contacts were strongly clustered around the kayak landing site and generally concentrated in shallow (<1m) areas along the shoreline. With the exception of the kayak landing area, substrate contacts were not concentrated in the most intensively used areas (e.g., reef shelf adjacent to the Cook Monument). Very few (2%) substrate contacts resulted from boat-based activities. Most observed contacts (85%) were with uncolonized rock substrate in shallow areas (<1m). Contacts with live coral (11% of observed substrate contacts) extended into deeper areas at Kaawaloa Cove but were less frequent than contacts with uncolonized rock.

Spatial Distribution of Activities

Snorkeling and SCUBA diving activities occupied 2-55% of the total surface area and less than 15% of the total area of reef habitat within each MPA. Thus these activities had no direct impact on 85% of MPA reef habitats, or on 45-98% of the total area of each MPA.

The areas used for snorkeling and SCUBA diving contained activity 'hot spots' (areas where these activities were concentrated) that were up to 6,800 m² in size and associated with reef habitats and points of access to the water.

Substrate contact was relatively uncommon in activity hotspots associated with reef habitats, suggesting that the concentration of SCUBA and snorkel activities within these areas does not necessarily exacerbate impact on reef habitats beyond that (if any) caused by the simple presence of people in the water column. Presumably this is because substrate contact by SCUBA divers and snorkelers is not inevitable (Rouphael & Inglis 1997, Plathong et al. 2000) and many people simply remain above the substrate without contacting it.

The greatest concentration of substrate contacts (55-57% of all contacts observed) occurred at shoreline access points where people stood and waded as they entered and exited the water.

Concussions and Recommendations

Results of the present study suggest that human impacts are currently minor at the four Hawaii MPAs investigated despite relatively high use (up to 100,000 snorkelers per year) of these areas. The interaction of two main factors (benthic assemblage composition and distribution of activity types among sites) is responsible for low human impact at these sites.

Benthic assemblages at three sites (Honolua Bay, Kealakekua Bay and Manele-Hulopoe) contain relatively fragile coral species (e.g., *P. compressa*) but these occur below the depth range of the most prevalent activity (snorkeling) at these sites.

The one MPA site where SCUBA diving is common (Pupukea MLCD) has an extremely resilient benthic assemblage consisting of encrusting and wave resistant species that are little affected by diver contact.

The wading and standing that has caused damage at other sites (e.g., Hanauma Bay) was limited in the present study to small areas around shoreline entry points and occurred almost entirely on inert substrates (sand and uncolonized rock).

The rate of coral damage observed (0.7% of all substrate contacts) in the present study is low compared to damage rates documented at other locations.

Present patterns and levels of recreational use at the four MPA sites appear to be sustainable but an ongoing monitoring effort (Diver Impacts) should be maintained to ensure that the cumulative effects of minor damage does not cause major degradation of corals over longer time scales.

A significant increase in the number of SCUBA divers visiting Honolua, Kealakekua or Manele Bays should be avoided because is likely to result in higher rates of damage to susceptible coral species (e.g., *P. compressa*) that are a common component of the benthic assemblage at these sheltered sites.

A single pre-dive briefing has shown to significantly reduce diver coral damage in other areas (Medio et al. 1997), these should be mandatory on all commercial snorkel and SCUBA diving tours. Finding effective methods for briefing shore-based snorkelers & SCUBA divers (who are responsible for the majority of substrate contact) could further reduce impacts on corals at Hawaii MPA sites. (Human Activities in MPAs)

Diver Impacts

The report by Tissot and Hallacher on Diver Impacts investigated SCUBA diving activities and their effects on Kealakekua Bay.

Introduction

Coral reefs are diverse and productive biological communities and important natural resources in tropical areas. However, reefs in many parts of the world are currently being threatened with a wide variety of anthropogenic disturbances (Richmond, 1993).

In the state of Hawaii, coral reef resources are worth over \$100 billion and are being degraded by overfishing, sediment runoff, nutrient pollution, and impacts from tourism (Clark and Gulko, 1999).

On the island of Hawaii, tourism along the west coast of the island is focused largely on nearshore activities, especially sunbathing, beachcombing, snorkeling and diving. In a typical year thousands of visitors swim, snorkel and dive over the reefs to observe corals, other invertebrates and colorful fishes.

As the number of visitors has increased in recent years there has been an increasing concern about potential impacts to coral reef ecosystems. In particular, observations of swimmers, snorkelers and divers standing and sitting on the coral are common as are instances of divers fins' breaking coral. Increasing occurrences of both bleached and broken coral in areas frequently visited by divers raised concern by the Hawaii Division of Aquatic Resources that prompted the initiation of this study.

The goal of this study was to estimate the extent of damage due to divers using the incidence of bleached and broken coral at a popular tourist site, Kealakekua Bay, in Diver impacts at Kealakekua Bay: Tissot & Hallacher, Page 3 west Hawaii.

The study compared the incidence of bleached and broken coral in an area of high diver activity to those in an adjacent low diver activity area. This study thus assumes that the two study areas were similar prior to the beginning of the study and had similar natural rates of bleaching and coral damage during the study period. These assumptions were tested during the course of the study.

Discussion

Both control and impact sites had similar substratum composition and hence met the assumption of the method that they were similar prior to the study. Therefore, assuming that natural processes which cause bleached and broken coral occurred at similar frequencies at both sites, any differences in these parameters is likely to be associated with the major difference between these sites: the frequency of human use by swimmers, snorkelers and divers.

Kealakekua Bay, being one of the most popular dive tour destinations in Kona, receives at least 50-200 visitors a day. Additional visitors may hike or drive down the trail to the Cook Monument or swim, sail or kayak over from Napo'opo'o across the bay. In contrast, swimmers are rarely seen at the control site.

The results of this study found no significant differences between impact and control sites in changes in coral cover, or the incidence of bleached and broken coral. (Diver Impacts)

However, in all cases the decline in coral cover and the incidence of bleached and broken coral was higher at the impact relative to the control site.

Although, there was no statistical support for the premise that divers at Kealakekua Bay are causing damage to the reef the authors note “data is suggestive that divers may be having an impact on the reef but this short term study was unable to clearly distinguish diver damage from natural changes.” They further state, “the principal results of this study strongly support the conclusion that a longer study be initiated to further investigate this possibility.”

Report To The Twenty-First Legislature, 2002 Regular Session, Requesting An Investigation Of The Impacts Of Increased Public Access On Kaawaloa And Kealakekua Bay, Island Of Hawaii

Senate Concurrent Resolution No. 139, Senate Draft 1 was adopted by the Legislature during the Regular Session of 2001. This Concurrent Resolution requests the Department of Land and Natural Resources (DLNR) to conduct an investigation of the impacts of increased public access at Kaawaloa and Kealakekua Bay on the Island of Hawaii. The Concurrent Resolution recognizes the historical and cultural significance of Kealakekua, the diverse marine resources of Kaawaloa Cove and the recreational opportunities available to hikers, horseback riders, fishermen, boaters and tour operators. The Findings provided the following recommendations.

Recommendations and Management Strategies

An inventory of the resources and an assessment of the potential impacts from existing recreational uses of Kealakekua Bay and the surrounding lands at Kaawaloa and Napoopoo form the basis for developing management strategies to protect the resources. Much of the management involves better oversight and control of the recreational activities in the bay. Such management will involve coordination between the multiple divisions within DLNR that have jurisdiction over the various resources and areas of Kealakekua.

In 2000, an intradepartmental working group was created by Richard Nelson, the Governor’s Liaison in Kona, to address the issues of Kealakekua Bay. This group, consisting of staff in Kona from DOBOR, DAR and DOCARE, met on several occasions to develop management recommendations and proposed rules. The discussions also addressed the implementation and enforcement issues associated with these recommendations. Many of these recommendations are addressed in DOBOR’s current draft of their Hawaii Administrative Rules regarding the recreational use of Kealakekua Bay.

Marine Resources

Naia (Spinner Dolphins)

The protection of the spinner dolphins in Kealakekua Bay is under the jurisdiction of the Federal government through the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS).

These agencies have been working with DLNR to identify the current situation in Kealahou and discussing means of managing human traffic and use of the bay as it relates to the dolphins. As a Federal responsibility, NOAA and NMFS have developed several informational and regulatory signs to promote protection of the spinner dolphins which have been posted at the Napoopoo wharf and the end of Napoopoo Beach Road.

Additional steps being discussed by NOAA and DLNR include:

- Establish a sanctuary where the dolphins rest. No vessels or human swimmers would be allowed in this area.
- Encourage tour operators to avoid the bay during the several hours when the dolphins are known to be resting in the bay, generally 11:00am to 2:30pm. At present, most of the recreational and commercial boating in Kealahou Bay is occurring between 9:00am and 12:00pm.
- Provide a viewing scope to observe dolphins from the shoreline. State Parks has been working with NOAA and the University of Hawaii, Sea Grant Extension Service on the design of a lookout with a viewing scope at the end of Napoopoo Beach Road.
- Educate park visitors and users about the bay through interpretive signs and the promotion of guided tours. Development of a series of interpretive signs about the marine resources of Kealahou Bay has been initiated by State Parks with technical assistance from DAR and the Sea Grant Extension Service and funding assistance from NOAA. Copies of the signs will be installed around the bay, including the Napoopoo wharf, at the end of Napoopoo Beach Road, and at the end of Kaawaloa Road. These signs will promote visitor awareness and proper behavior around the dolphins that frequent Kealahou Bay.

Reef of Kaawaloa Cove

DAR has entered into the first phase of a project with the University of Hawaii, Hawaii Institute of Marine Biology. Observations will be made between August 2001 and August 2002 to document existing use of the bay and analyze the annual visitation pattern. A second phase (August, 2002 to August, 2003) will address the impacts of this visitation on the marine resources of Kealahou Bay. This two-year study will provide DLNR with the baseline data to make more informed management decisions.

While DLNR does not currently require visitor education about the bay through any existing permits, the tour operators and kayak rental companies appear to be providing some of this information. During the surveys on July 26, and October 13, 2001, it was observed that the permittees give a safety briefing and tell visitors not to step on the corals or go ashore. Talking with some of the kayakers, it was apparent that kayak rental companies vary in the information they provide to visitors before they arrive at Kealahou Bay. DOBOR has addressed this need for visitor education through a proposed amendment to their Administrative Rules.

Education about the fragile nature of the coral reef is of special concern. Additional recommendations for protecting the reef of Kaawaloa Cove emphasize education and regular monitoring to evaluate the effectiveness of these educational measures.

Recommendations include:

- Prepare an educational packet for distribution to recreational users, kayak rental companies and commercial boat operations. DAR has already printed several brochures that share general guidelines for protecting corals.
- Review and comment on visitor education programs developed by recreational and commercial boaters in compliance with the proposed amendment to DOBOR's Administrative Rules.
- Complete and install the interpretive signs being developed by State Parks and the Sea Grant Extension Service for Kealahou which discuss the resources of the bay and what visitors need to do to help protect these resources.

Recreational Use of the Bay

Controlling and regulating the recreational use of the bay is key to maintaining an acceptable level of use in the bay. Determining an acceptable level of use should be based on 1) avoiding adverse impacts to the resources, 2) maintaining the historical setting for the historical park, and 3) providing a satisfactory visitor experience. Much of the responsibility for maintaining an acceptable level of use lies with DOBOR.

DOBOR Rules and Regulations

The staff of DOBOR held numerous meetings with the community and the commercial boating and kayak rental operators in Kona during 1999 and 2000 to develop draft amendments to Chapter 13-256, Hawaii Administrative Rules regarding boating and ocean recreation activities in Kealahou Bay.

The major amendments include:

- Establishment of a no vessel zone (Zone C) along the base of Pali Kapu O Keoua. Scuba, snorkeling and swimming are allowed in this zone.
- Establishment of a Zone D within the bay that controls the number of commercial recreational vessels through permitting. A maximum number of permits is established and these permits outline a maximum capacity for each vessel. These permits also require the commercial and rental vessels to have a guide. These permits address both manually propelled vessels and kayaks.
- Requiring a permit from DLNR to land at Kaawaloa from the ocean waters of Kealahou Bay.
- Requiring that commercial permittees establish an education program that addresses the cultural and natural resources of Kealahou, the rules pertaining to the protection of these resources, and the ecological significance of the area.

Further action on DOBOR's draft amendments to their Administrative Rules is awaiting the findings from the study being conducted on the Napoopoo wharf, as it will affect the proposed rules on kayaking.

Napoopoo Wharf

Around 1994, Land Division posted “No Commercial Activities” signs at the Napoopoo wharf in an effort to control the commercial kayak activities occurring from the wharf and the Napoopoo side of the bay. DOBOR took over jurisdiction of the wharf in 1997 and is currently addressing a similar situation in 2001 involving kayak rentals from the wharf.

DOBOR is also conducting a study on the structural condition and safety of the Napoopoo wharf which is expected to be completed by the end of 2001. If the wharf is found to be unsafe, it will be closed until the safety concerns are addressed. This will affect the recreational use of the bay by kayakers and other boaters departing from Napoopoo. Alternative kayak launching sites at Napoopoo are limited due to the nature of the boulder beach at Napoopoo and community objections to commercial activities at Manini Beach.

Kaawaloa Moorings

In an effort to control the kayak landings at Kaawaloa, DOBOR has recommended an amendment to their Administrative Rules that would make it illegal to land at Kaawaloa from the ocean without a permit from DLNR. This would avoid the impacts of kayaks being pulled over the *pahoehoe* and reduce the concern about plastic shavings in the bay that result from this activity. Recognizing that many of the kayakers wish to snorkel in Kaawaloa Cove, DAR and others have recommended the placement of one or two day moorings for kayaks to tie up to (Clark, 1997: E-10; Clark and Gulko, 1999:36). However, DOBOR recognizes that such mooring could cause a visual impact to the bay and may cause damage to the corals by the people standing to get in and out of their kayaks. There are also safety concerns for inexperienced kayakers trying to exit and enter their kayak from the water. DLNR is continuing to look at day moorings for kayaks as one option while exploring other possibilities for kayakers wishing to snorkel at Kaawaloa Cove.

Commercial Ramp Use Permits

The issuance of commercial ramp use permits by DOBOR provides the best means of controlling visitation and the boat traffic in the bay. While a ceiling for these permits was established in 1999, there has been no evaluation of this ceiling relative to an acceptable level of use in Kealakekua Bay.

To make this evaluation, the following actions by DOBOR are recommended:

- Require monthly and annual passenger counts from the permittees to assess the actual visitation counts for Kealakekua Bay.
- Work with the permittees to stagger their visitation at Kaawaloa Cove to minimize “overcrowding” in the morning hours. Determining an appropriate level of visitation should also address visitor safety when both snorkelers and motorized vessels are in the cove.
- Monitor the visitation pattern at Kaawaloa Cove, especially during the summer months when visitation is highest. At present, such monitoring occurs from the Napoopoo wharf because DOBOR lacks a vessel capable of making the trip from Honokohau Harbor to Kealakekua Bay.

- Reconvene the intradepartmental working group once a year to determine if the number of permits or the vessel capacity need to be adjusted based on the level and quality of visitation, the status of the resources, and the enforcement/ management concerns.

Cultural Resources of Kaawaloa Flat

It has been stated at several community meetings that the State needs to provide facilities at Kaawaloa if they are going to continue to allow public use of the area. These users include those accessing the area by land routes (hikers, horses, and 4WD vehicles), as well as those accessing the area by ocean routes (kayakers, private boaters, and swimmers). The interim facilities most commonly mentioned are restrooms and trash receptacles. At meetings between the boating community and DOBOR, an offer was made by the boaters to assist with the payment for these facilities but regular maintenance and placement within the cultural complex are unresolved issues.

The other recommendation from the boating community was to have a “presence” at Kaawaloa. Again, the boating community was willing to explore funding support for this person who could be a State employee. A similar approach was effective in establishing an “ambassador” (Park Technician) position at Na Pali Coast State Park on Kauai in 1995.

One of the major unresolved issues for addressing the cultural resources at Kaawaloa is the delay in transferring jurisdiction of the lands for Kealahou Bay SHP to State Parks for interim management and maintenance. Once jurisdiction is given to State Parks, there would be an opportunity to request additional personnel and broaden the scope of responsibilities for staff to manage and maintain the land area from Napoopoo to Kaawaloa. The delay is hampered by recent community objections to the planning process that resulted in a lawsuit filed against State Parks in 2000 by the organization named Malama Pono Kealahou. Funding will be requested in a future biennium budget to reassess the 1997 Conceptual Plan and prepare an EIS for the entire park area.

In the Conceptual Plan for Kealahou Bay SHP, there is a proposed interpretive facility at Kaawaloa that would also house a self-composting toilet. As a reconstruction of one of the historic buildings at Kaawaloa, this facility would complement the historical setting and interpretation of Kaawaloa. A staff person would be assigned to the Kaawaloa section of the park to oversee the interpretive program, resource management and maintenance. However, these are long-term plans that are dependent on the completion of the park plans and regulatory documents, as well as the availability of funds.

Some recommendations for the interim management of the cultural resources are:

- Recruit and fill the State Parks Interpretive Park Technician. This special funded position was recently redescribed to emphasize marine education programs in the shoreline parks of Kona, including Kealahou Bay SHP. This position could provide a part-time presence at Kaawaloa to assist in visitor education and resource monitoring.
- Explore the possibilities of expanding the scope of responsibilities for the park caretaker assigned to Kealahou Bay SHP to include a weekly trip to Kaawaloa to conduct basic maintenance.

- Continue discussions with the boating community for their funding support with interim facilities and staffing at Kaawaloa.
- Coordinate efforts with DOBOR and DOCARE to control or eliminate boat landings at Kaawaloa Flat until facilities and management are in place.
- Retain the vegetation cover along the shoreline between the Cook Monument and the end of Kaawaloa Road to minimize sites for kayak landings until the DOBOR amendments are adopted. Hopefully, this will keep most of the landings at the end of the Kaawaloa Road where there is minimal impact to the corals.
- Place signs to encourage kayakers and hikers to enter the water from the end of the Kaawaloa Road, rather than from the wharf at the Cook Monument.
- Do not promote the Kaawaloa Road as a trail to Kaawaloa Flat until management strategies are in place to protect the cultural resources of Kaawaloa Flat.
- Regulate the commercial horse tours to Kaawaloa. While the Kaawaloa Road was used by horses in the past, the lack of maintenance has made the road susceptible to erosion that may be aggravated by the frequent use by horses today. There are precedents for permitting these horse tours on trails under the jurisdiction of the Na Ala Hele Program.
- Install vehicle barriers at the State property boundary on Kaawaloa Road and the coastal Cart Road to control vehicular access to Kaawaloa Flat.
- Install interpretive signs at Napoopoo and Kaawaloa that point out the cultural and historical significance of Kealakekua and promote the protection of the archaeological sites.

2001 Kealakekua Operators Association Recommendations

In 2001, the Kealakekua Operators Association consisting of representatives from Captain Zodiac, Sea Quest Ltd., Fair Wind, Pack and Paddle Kayaks, Dolphin Discoveries and Ocean Safaris Kayaks offered recommendations for commercial use of Kealakekua Bay. The Association had the following recommendations.

Commercial Vessels

- Kealakekua Bay should remain as an Ocean Recreational Management Area.
- Issue commercial permits for Kealakekua Bay to companies that use the bay on a regular basis (4 times a week or more with the exception of the permitted kayak companies who are presently prohibited from conducting guided tours).
- DOBOR shall issue Permit Use decals to be attached to applicable vessels, except moored permittees.
- Creation of Vessel Exclusion Zone, No Wake Zone, No Anchor Zone, Day Use Moorings and Kayak Mooring Buoy.
 - All vessels are prohibited from entering the vessel Exclusion Zone, except for traditional (Akule) fishing.
- Use Permit Categories
 - Moored Vessels
 - Fairwind
 - Hawaiian Cruises

- Drift and Start Engines, Idle to Maneuver only by permit
 - Captain Zodiac
 - Sea Quest
 - Dolphin Discoveries
- Manually Propelled Vessels - Kayaks
 - Hawaii Pack and Paddle
 - Ocean Safaris
 - Aloha Kayaks

Kealahou Bay Commercial Use Permits

- All current commercial users of Kealahou Bay shall annually be issued a “Kealahou Bay Commercial Use Permit”. All applicants must currently hold a “Commercial Use Permit” issued by DLNR DOBOR
- No new permits shall be issued for a period of 3-5 years
- A monthly fee of ½% gross revenues shall be paid to DLNR DOBOR for the revenue generated by the commercial activity in Kealahou Bay. This is in addition to the regular monthly amounts required by DLNR DOBOR on commercial permits. All companies will pay the same percentage fee.
- Commercial users who currently have a Kealahou Bay Mooring Permit shall be exempt from the additional ½% fee if they are now paying an additional fee for the use of the bay.
- Commercial users who do not possess a “Kealahou Bay Commercial Use Permit” shall be allowed access to Kealahou Bay at times of high surf and strong winds up to a maximum of eight (8) times a calendar year. Vessels must be tied up to a “Day Use” mooring prior to disembarking passengers into the water.
- Commercial users who currently provide SCUBA and SNUBA activities in the bay are allowed to continue same activities with limited numbers, if necessary, and providing close controls of participants to avoid harming coral formations
- Current commercial users of Kealahou Bay shall request, in writing permission to provide evening snorkel cruises.
- All holders of “Kealahou Bay Commercial Use Permit” shall establish and fund an on-the-water Docent program to assist in the monitoring, education and enforcement of rules and guidelines.
 - Such a position shall be managed by a Non-profit Organization, Non-Governmental Organization and will include an advisory board composed of one (1) member each from:
 - DLNR DOBOR District Manager
 - Community
 - Non-Profit/Non-Governmental Organization
 - As well as two (2) members from the commercial permit holder
 - Such board shall meet quarterly or as needed; officers shall hold office for a period of one (1) year except for the District Manager who shall be required to attend as long as they hold the position

Kealakekua Bay Commercial Drift Permit

- All current companies not possessing a Mooring Permit shall be issued a Kealakekua Bay Commercial Powerboat Drift Use Permit annually.
 - Current “Drift” companies are:
 - Captain Zodiac
 - Sea Quest, Ltd.
 - Dolphin Discoveries
- Only companies possessing a Kealakekua Bay Drift Permit shall be allowed to off load passengers into the snorkel area unless secured to moorings.
- Companies possessing a Drift Permit shall have boats of 30 feet or less and carry no more than eighteen (18) passengers per vessel. No vessel shall remain in the snorkeling area for more than two (2) hours from first entering the bay.
- By 2004 all companies possessing a Drift Permit shall be equipped with motors that meet the 2006 EPA requirements.
- All companies holding a Drift Permit shall operate by “Drift and start engines to maneuver only” rules.
- No anchoring in the snorkel area shall be allowed at any time.
- Permitted companies are restricted to the following number of vessels for a period of 3-5 years
 - Captain Zodiac Three (3)
 - Sea Quest Ltd. Five (5)
 - Dolphin Discoveries Two (2)
- The maximum number of vessels in the snorkeling area is limited by the permit holder.

2001 Kealakekua Intradepartmental Working Group Recommendations

In 2001 the Kealakekua Intradepartmental Working Group drafted preliminary DOBOR HAR amendments and other recommendations for Kealakekua Bay. This initiative was based on substantial community and commercial operator input. The Group’s recommendations included the following.

- Vessel kapu area
- Commercial use kapu area
- Limit of 4 commercial guided tour kayak permits
 - Maximum of 8 individuals per permit
- Limit of 4 commercial kayak rental permits
 - Maximum of 10 kayaks per permit
- Maximum of 6 permits for commercial motorized vessels
 - Maximum vessel length not to exceed 30’
 - 20 passengers per vessel
- All commercial operators prohibited from sunset to sunrise
- Any recreation group exceeding 10 individuals shall obtain a special use permit
- Establishment of an education program

STATUTORY AND REGULATORY PROCESSES THAT ADDRESS THE ISSUES:

Marine Life & Marine Life Conservations Districts (MLCD):

MLCDs were introduced to Hawaii in the fall of 1967 with Hanauma Bay on Oahu. The resulting increase in fish populations was phenomenal, and the bay has become world famous. At the present time there are eleven MLCDs statewide, and other sites are being considered as well. DLNR establishes Marine Life Conservation Districts, as authorized by Chapter 190 of the Hawaii Revised Statutes. DLNR's Division of Aquatic Resources (DAR) regularly conducts surveys of marine ecosystems throughout the state, and may recommend MLCD status for areas that appear particularly promising.

Since the purpose of MLCDs is to protect marine life to the greatest extent possible, the taking of any type of living material (fishes, eggs, shells, corals, algae, etc.) and non-living habitat material (sand, rocks, coral skeletons, etc.) is generally restricted, if it is permitted at all. This fosters non-consumptive uses of the area, such as swimming, snorkeling and diving.

Fishing may be allowed subject to certain types of gear restrictions, which result from input received during the public meeting process. However, from a conservation standpoint (and to avoid confusion about the rules), it may be desirable to prohibit all consumptive use in future MLCDs. Signs located at each MLCD indicate the District's boundaries and describe regulations for the area.

Kealakekua Bay was designated as a Marine Life Conservation District (MLCD) in 1969. This 315-acre area extends from the highwater mark seaward to a line from Cook Point to Manini Beach point. There are two subzones within the MLCD, with restrictions highest in Subzone A near Kaawaloa Cove. The removal of coral, sand, or other geological features is not permitted anywhere within the bay.

In Subzone A, fishing or anchoring of boats is not permitted (although moorings are provided for commercial boats). In Subzone B, hook-and-line and thrownet is permitted and any legal fishing methods may be used to take akule, opelu, and crustaceans. Anchors may be dropped into sand if coral damage is avoided. Commercial activities such as water skiing, jet skiing, para-sailing, and motorboat racing are not allowed in the MLCD. (Park Plan)

Nearshore fishes have always played important roles in the lifestyles of Hawaii's people. Many of these fishes are commercially valuable, some as food fish and some as aquarium pets. Many local residents enjoy recreational fishing. Snorkeling and SCUBA diving are popular activities with residents and tourists, and offer excellent opportunities to see reef fish in their natural environment.

Hawaii's recent history has shown that the state's growing population can have an adverse effect on nearshore fish populations. Protecting this important resource for the enjoyment of future generations is essential. Ideally, management of the resource should balance the needs of different user groups, but the welfare of the marine environment on which its inhabitants depend must be the most important consideration.

Marine Life Conservation Districts (MLCDs) are designed to conserve and replenish marine resources. MLCDs allow only limited fishing and other consumptive uses, or prohibit such uses entirely. They provide fish and other aquatic life with a protected area in which to grow and reproduce, and are home to a great variety of species. Fishes in most MLCDs are fairly tame and often show little fear of humans. MLCDs are most popular as sites for snorkeling, diving and underwater photography.

Hawaii Administrative Rules

Title 13, Subtitle 4 Fisheries, Part 1 Marine Life Conservation Districts, Chapter 29 Kealakekua Bay Marine Life Conservation District, Hawaii

§13-29-1 Boundaries. The Kealakekua Bay Marine Life Conservation District, subzones A and B, shall include that portion of the submerged lands and overlying waters of Kealakekua bay beginning at the highwater mark at the shoreline and those lands described in the survey description entitled "Kealakekua Bay Marine Life Conservation District, subzones A and B, situated in the offshore waters of Kaawaloa, Kealakekua, Kiloa, Waipunala, Kalama 1, 2, 4, and 5, Liloa, and Kahauloa 1, South Kona, Island of Hawaii" and as identified as C.S.F. No. 15,832, dated April 23, 1969, on file with the departments of land and natural resources, and accounting and general services, and delineated in "Map of the Kealakekua Bay Marine Life Conservation District, Hawaii 4/23/69" attached at the end of this chapter. [Eff: MAY 26 1981] (Auth: HRS §1903)(Imp: HRS §§190-1, 190-2, 190-3)

§13-29-2 Prohibited activities. No person shall engage in the following activities in the Kealakekua Bay Marine Life Conservation District:(1) Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and opihi, live coral, algae or limu, or other marine animal, or other marine life, or eggs thereof; or (2) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature, or specimen. [Eff: May 26 1981](Auth: HRS §190-3)(Imp: HRS §§190-1, 190-3)

§13-29-3 Permitted activities. A person may: (1) Fish for, catch, take, possess, or remove, from subzone B: (A) Any finfish by hook-and-line or thrownet; and (B) Akule (*Trachurops crurmenophthalmus*), opelu (*Decapterus pinnulatus*) and crustacean by any legal fishing method or device, except traps; and (2) Possess in the water, any knife and any shark billy, bang stick, powerhead, or carbon dioxide (C02) injector for the sole purpose of personal safety. Eff: MAY 26 1981](Auth: HRS §190-3)(Imp: HRS §§190-1, 190-3)

§13-29-4 Exceptions; permits. The department may issue permits to engage in activities otherwise prohibited by law and section 13-29-2 for scientific, propagation or other purposes not inconsistent with chapter 190 and section 187A-6, Hawaii Revised Statutes, provided that: (1) The board may impose terms and conditions it deems necessary to carry out the purpose of chapter 190, Hawaii Revised Statutes; (2) The board may revoke any permit for any infraction of the terms and conditions of the permit; and (3) A person whose permit was revoked shall not be eligible to apply for another permit until one year after the date of revocation. [Eff: 5/26/81; am MAR 2 1987] (Auth: HRS §190-3) (Imp: HRS §§187A-6, 190-4)

§13-29-5 Penalty. A person violating the provisions of this chapter or the terms and conditions of any permit issued as provided by this chapter, shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be punished as provided by law. [Eff: MAY 26 1981] (Auth: HRS §190-3) (Imp: HRS §190-5)

Hawaii Revised Statutes

Chapter 190 Marine Life Conservation Program

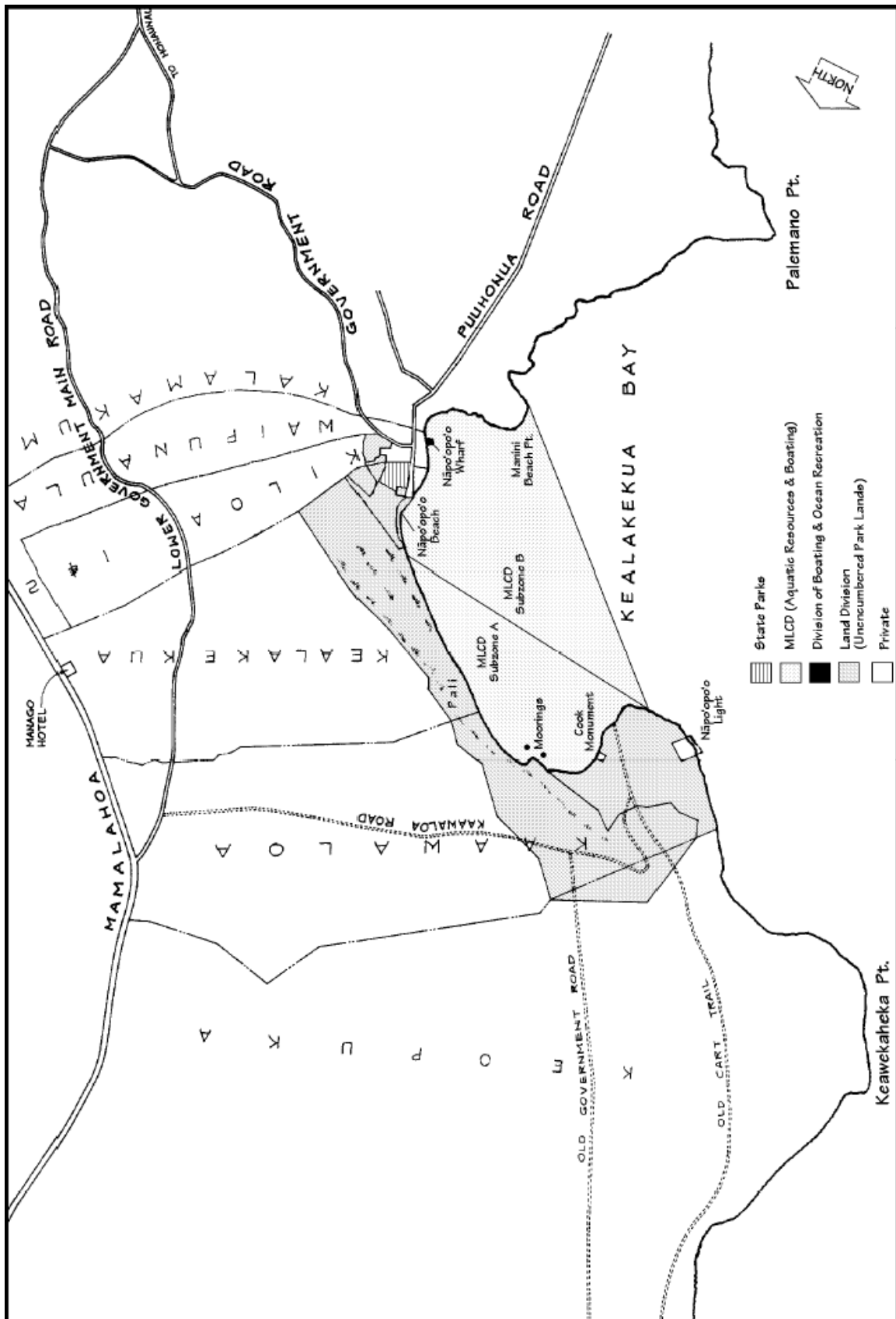
§190-1 Conservation area; administration. All marine waters of the State are hereby constituted a marine life conservation area to be administered by the department of land and natural resources subject to this chapter and any other applicable laws not inconsistent herewith or with any rules adopted pursuant hereto. No person shall fish for or take any fish, crustacean, mollusk, live coral, algae or other marine life, or take or alter any rock, coral, sand or other geological feature within any conservation district established pursuant to this chapter except in accordance with section 190-4 and rules adopted by the department pursuant hereto. [L 1955, c 192, §2; RL 1955, §21-131; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-1; am L 1981, c 16, §1]

[§190-1.5] State marine waters. As used in this chapter, state marine waters shall be defined as extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary. [L 1990, c 126, §4]

§190-2 Establishment and modifications of conservation district. The department of land and natural resources may establish and from time to time modify the limits of one or more conservation districts in each county and may, if it deems necessary, declare all waters within any county a conservation district. [L 1955, c 192, §5; RL 1955, §21-134; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-2]

§190-3 Rules. The department of land and natural resources pursuant to chapter 91, shall adopt rules governing the taking or conservation of fish, crustacean, mollusk, live coral, algae, or other marine life as it determines will further the state policy of conserving, supplementing and increasing the State's marine resources. The rules may prohibit activities that may disturb, degrade, or alter the marine environment, establish open and closed seasons, designate areas in which all or any one or more of certain species of fish or marine life may not be taken, prescribe and limit the methods of fishing, including the type and mesh and other description of nets, traps, and appliances, and otherwise regulate the fishing and taking of marine life either generally throughout the State or in specified districts or areas. The rules shall upon taking effect supersede any state laws inconsistent therewith. [L 1955, c 192, §6; RL 1955, §21-135; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-3; am L 1981, c 16, §2]

§190-4 Permits. The department of land and natural resources may, in any conservation district, prohibit the taking of marine life or the engaging in activities prohibited by this chapter and rules adopted thereunder, except by permit issued by it for scientific, education, or other public purposes on such terms and conditions deemed necessary to minimize any adverse effect within the conservation district. The department may revoke



any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation. [L 1955, c 192, §7; RL 1955, §21-136; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-4; am L 1981, c 16, §3]

§190-4.5 Anchoring, boating, and mooring in marine life conservation districts; rules. (a) The department shall, pursuant to chapter 91, adopt rules for the regulation of anchoring and mooring in each marine life conservation district established under this chapter.

(b) Within its jurisdiction over ocean recreational boating and coastal activities, the department shall adopt rules pursuant to chapter 91 for the regulation of boating in each marine life conservation district established under this chapter. [L 1988, c 381, §1; am L 1991, c 183, §1]

§190-5 Penalty. (a) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued under section 190-4, shall be guilty of a petty misdemeanor and punished as provided in subsections (b) and (c).

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(c) The fines specified in this section shall not be suspended or waived. [L 1955, c 192, §8; RL 1955, §21-137; HRS §190-5; am L 1981, c 16, §4; am L 1999, c 195, §9]

Chapter 195D Conservation of Aquatic Life, Wildlife, and Land Plants

§195D-1 Findings and declaration of necessity. Since the discovery and settlement of the Hawaiian Islands by humans, many species of aquatic life, wildlife, and land plants that occurred naturally only in Hawaii have become extinct and many are threatened with extinction, primarily because of increased human use of the land and disturbance to native ecosystems.

All indigenous species of aquatic life, wildlife, and land plants are integral parts of Hawaii's native ecosystems and comprise the living heritage of Hawaii, for they represent a natural resource of scientific, cultural, educational, environmental, and economic value to future generations of Hawaii's people.

To insure the continued perpetuation of indigenous aquatic life, wildlife, and land plants, and their habitats for human enjoyment, for scientific purposes, and as members of ecosystems, it is necessary that the State take positive actions to enhance their prospects for survival. [L 1975, c 65, pt of §1; am L 1983, c 111, §2; gen ch 1993]

§195D-3 Determination by the department relating to conservation of particular species. (a) There is established within the state treasury a trust fund to be known as the endangered species trust fund to be administered by the department to implement the purposes of this chapter.

[§195D-5.1] Protection of Hawaii's unique flora and fauna. The department of land and natural resources shall initiate amendments to the conservation district boundaries consistent with section 205-4 in order to include high quality native forests and the habitat of rare native species of flora and fauna within the conservation district. The department may seek assistance from appropriate public, private, and nonprofit agencies and may employ consultants as necessary to implement this section. [L 1987, c 82, §2]

Chapter 187A Aquatic Resources

HRS §187A-6 Special activity permits. (a) Notwithstanding the provisions of any other law, the department may take aquatic life or possess or use any fishing gear for scientific, educational, management, or propagation purposes, for removal of aquatic species, or for implementing the powers and duties as described by section 187A-2; subject to chapter 195D. The department shall consider using chemicals or electrofishing devices only when it has determined that no other reasonable alternative would be appropriate. The application of chemicals or operation of electrofishing devices shall be in accordance with established procedures and with the proper training to ensure that the intended results are achieved.

(b) Notwithstanding the provisions of any other law, the department may issue permits, not longer than one year in duration, to any person to take aquatic life, possess or use fishing gear, or engage in any feeding, watching, or other such non-consumptive activity related to aquatic resources, otherwise prohibited by law, in any part of the State, for scientific, educational, management, or propagation purposes, subject to chapter 195D and subject to those restrictions the department deems desirable. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

(c) The department may adopt rules pursuant to chapter 91 for the purpose of this section.

(d) For the purposes of this section, unless the context clearly indicates otherwise: "Fishing gear" means any device, including the use of any chemical or electricity that is either designed to take aquatic life or could be used to take aquatic life. [L 1985, c 94, pt of §1; am L 1991, c 160, §3; am L 1992, c 96, §1; am L 2002, c 96, §1]

West Hawaii Regional Fishery Management Area (FMA)

The West Hawaii FMA was established 1998 and is regulated by the Division of Aquatic Resources. The FMA is located on the west coast of Hawaii Island, from Ka Lae, Kau (South Point) to Upolu Point, North Kohala, but not including Kawaihae commercial harbor.

The FMA's purpose is to:

- Ensure the sustainability of the State's nearshore ocean resources;
- Identify areas with resource and use conflicts;
- Provide management plans as well as implementing regulations for minimizing user conflicts and resource depletion, through the designation of sections of coastal waters in the West Hawaii regional fishery management area as fish replenishment areas where certain specified fish harvesting activities are prohibited, and other areas where anchoring and ocean recreation activities are restricted;
- Establish a system of day-use mooring buoys in high-use coral areas and limit anchoring in some of these areas to prevent anchor damage to corals;
- Identify areas and resources of statewide significance for protection;
- Carry out scientific research and monitoring of the near-shore resources and environment and
- Provide for substantive involvement of the community in resource management decisions for this area through facilitated dialogues community residents and resource users.

The department has also been tasked with developing a West Hawaii regional fishery management area plan that identifies and designates appropriate areas of the management area as follows:

- Designates a minimum of thirty per cent of coastal waters in the Hawaii regional fishery management area as fish replenishment areas in which aquarium fish collection is prohibited;
- Establishes a day-use mooring buoy system along the coastline of the West Hawaii regional fishery management area and designates some high-use areas where no anchoring is allowed;
- Establishes a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed and
- Designates areas where the use of gill nets as set nets shall be prohibited.

Hawaii Administrative Rules

Marine Fisheries Management Areas - West Hawaii Regional Fisheries Management Area, Hawaii

13-60.3-3 General Conditions

HAR 13-60.3-3 (a) Unless otherwise authorized by law, it is unlawful for any person to engage in or attempt to engage in fish feeding in any area designated in this chapter, including the Lapakahi Marine Life Conservation District, the Wailea Bay Marine Life Conservation District, the Old Kona Airport Marine Life Conservation District, the Kealahou Bay Marine Life Conservation District, Puako Bay and Puako Reef fisheries management areas, Kiholo Bay fisheries management areas, and Keauhou Bay fisheries management areas.

13-60.3-19 Napoopoo-Honaunau Fisheries Managed Area

HAR §13-60.3-19 Napo'opo'o-Honaunau fisheries management area. (a) The Napo'opo'o-Honaunau fisheries management area shall be identified on shore to the north by the southern boundary of Kealahou Bay marine life conservation district (Manini Point) and to the south by the southern boundary of Pu'u honua O Honaunau (Ki'ila). [Eff 12/31/99] (Auth: HRS §§187A-5, 188- 53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

Ocean Recreation Management Areas (ORMAs)

Ocean Recreation Management Areas (ORMAs) are established by the Board of Land and Natural Resources and administered by the DLNR division of Boating and Ocean Recreation. ORMAs are established to:

- (1) Provide for increased public access;
- (2) Reduce user conflicts;
- (3) Promote overall public safety; and
- (4) Avoid possible adverse impacts on humpback whales or other protected marine life.

The designated areas also are established to control certain commercial activities to specifically designated locations and time periods as well as place limits on equipment types. Both recreational and commercial vessels may use designated areas when the permitted activity is not taking place and may cross the area at all times with caution.

There are specifically designated zones assigned to qualified permittees within each ORMA. For example, commercial thrill craft may only operate in a specifically assigned location with not more than six craft in an area measuring 400 feet in diameter.

The purpose of the ORMA rules and designation of ORMAs is to reduce conflicts among ocean water users, especially in areas of high activity. The department has designated ten "Ocean Recreation Management Areas." All other waters of the state within three thousand feet seaward of the base line of the territorial sea are established as non-designated ocean recreation management areas subject to the rules.

Non-designated Ocean Recreation Management Areas prohibit the commercial use of controlled ocean sports. In these areas off the islands of Kauai, Oahu, Maui, and Hawaii, recreational (i.e. non-commercial) thrill craft may operate in State waters only from 500 feet from the shore line (or outer edge of a fringing reef) to two miles off shore. Commercial or recreational use of controlled ocean sports equipment is prohibited around the islands of Lanai and Molokai. Similar rules are pending for Kahoolawe. There are no ingress/egress corridors established in non-designated Ocean Recreation Management Areas. Thus, motorized commercial vessels may not land and/or pick up passengers in these locations.

Hawaii Administrative Rules

Chapter 256 Ocean Recreation Management Rules and Areas, Subchapter 1 General Provisions for the Ocean Recreation Management Plan (13-256-1 through 13-256 - 20)

§13-256-1 Purpose and Scope. (a) The purpose of these rules is to reduce conflicts among ocean water users, especially in areas of high activity. The department has designated ten "Ocean Recreation Management Areas", which are described in subchapters 2 through 11, of this chapter. (b) All other waters of the state within three thousand feet seaward of the base line of the territorial sea are established as non-designated ocean recreation management areas subject to this chapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-2 Interpretation. (a) If any section of these rules is inconsistent with any law of the State of Hawaii, or any laws of the United States, or any rule, or standard established pursuant to federal law, the State law or federal law, rule or standard shall govern. Nothing contained in these rules shall be construed to limit the powers of any department or agency of the state. (b) These rules shall be construed liberally, consistent with the purpose stated in section 13-256-1. (c) In areas designated for a specific use, if another use is not specifically restricted, that use is presumed to be allowed in addition to the use for which the area is designated, unless otherwise prohibited by this chapter. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Auth: HRS §§200-22, 200-24)

§13-256-3 Commercial operator permit requirements. (a) All operators of commercial vessels, water craft or water sports equipment shall apply for a commercial operator permit to be issued by the department. The applicant for such permit shall comply with the applicable provisions stated in Hawaii Administrative Rules, and Ocean Waters, Navigable Streams and Beaches, Sections 13-251-1 through 13-251-20. A valid commercial use permit issued to the owner of a vessel to operate from state harbor or launching ramp facilities shall satisfy the commercial operator permit requirement of this section for the operation of that particular vessel. (b) The department shall establish and maintain a Recreation Advisory Committee of not less than three for each recreation management area as defined in this chapter to review and make recommendations for commercial operator permit to be issued by the department as required by this section. The department shall consider the recommendations of the Advisory Committee, but is not bound by the recommendations. Members of the Recreation Advisory Committee shall have not less than three years experience in their area of specialty. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-256-4 Commercial Vessel and water sports equipment registration requirements. (a) All commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use in compliance with Sections 13- 251-36 to 13-251-52. (b) Commercial use permits issued by the department for commercial vessels operating from state harbors or boating facilities are exempt from the requirements of this section. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-10 Revocation. (a) The department may immediately revoke a commercial use permit without the necessity for a hearing for any activity which does or may endanger the health or safety of passengers or the public. (b) The department may revoke a commercial use permit for violation of any rules of the department if after 72 hours notice of the violation by the department the permittee fails to cure the violation. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-12 Gross receipts. (a) Gross receipts as used in this chapter means all moneys paid or payable to the account of the commercial permittee, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, and sales have a direct relationship to the vessel. (b) Each commercial permittee shall be responsible for

submitting to the department a monthly statement of its gross receipts. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §200-2, 200-3, 200-4)

§13-256-13 Mooring of rafts and platforms. All permanent mooring of rafts and platforms for use in thrill craft, parasailing and other water sports activities is prohibited. Rafts and platforms shall be removed daily from state waters or located in a designated anchorage or harbor in accordance with a valid permit issued by the department. Ground tackle for mooring of rafts and platforms shall not be placed on live coral. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-256-14 Safety and enforcement. The restrictions cited in this chapter shall not apply in the event of an emergency, to law enforcement or rescue craft, or to vessels participating under a valid ocean waters event permit issued by the department or the U.S. Coast Guard. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-40) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-15 Commercial vessel shoreline access. No commercial vessel shall land, embark or discharge passengers at any state or county facility, or at other public beaches except for locations at which the permittee has been issued an appropriate permit by the department or a lease or permit by the board of land and natural resources or a county, or within designated ingress/egress zones. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

Chapter 256 Ocean Recreation Management Rules and Areas, Subchapter 11 West Hawaii Ocean Recreation Management Area (13-256-150)

HAR §13-256-150 Definition. The "West Hawaii Ocean Recreation Management Area" means all ocean waters and navigable streams from the southernmost boundary of Honaunau Bay, South Kona, to the north west boundary of Honokoa Gulch, North Kohala, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "FFF", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: 200-2, 200-3, 200-4)

Title 13, Subtitle 11, Ocean Recreation and Coastal Areas Part 3 Ocean Waters, Navigable Streams and Beaches Chapter 250 General Provisions

§13-250-1 Purpose and scope. The purpose of these rules is to further the public interest and welfare and to promote safety within the geographical limits of certain portions of Hawaii's ocean waters, navigable streams and beaches, as the same may from time to time be designated and described in these rules. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-250-5 Definitions. As used in this part, unless the context clearly indicates otherwise: "Business" includes all activities engaged in or caused to be engaged in by any person or legal entity with the object of making a profit or obtaining an economic benefit either directly or indirectly.

"Carrying passengers for hire" means the carriage of any person or persons by a vessel for compensation flowing, whether directly or indirectly, to the owner, charterer, operator, agent, or any other person interested in the vessel.

"Commercial ocean recreation activities" means any ocean recreation activity offered for a fee.

"Kayak" means a portable boat styled like an Eskimo canoe and propelled by use of a double-bladed paddle.

"Operate" means to navigate or otherwise use a vessel, surfboard, or paddle board (paipo board).

"Operator permit" means the permit issued by the department which authorizes either the direct operation or the offering for a fee, surfboards and sailboards or any vessel, watercraft or water sports equipment on the ocean waters and navigable streams of the state.

"Recreation" means to create anew, restore, refresh, a diversion such as a hobby or other leisure time activities.

"Vessel" means any watercraft, used or capable of being used as a means of transportation on or in the water.

"Water sports equipment" means any equipment, contrivance, frame or other device that one or more persons may lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation or sports, and not necessarily for transportation. [Eff 2/24/94] (Auth: HRS §§200-2, 200- 4) (Imp: HRS §§200-2, 200-4)

Ocean Recreation and Coastal Areas Part 2 Boating Chapter 244 Rules of the Road; Local and Special Rules, Kealakekua Bay Ocean Waters

HAR §13-244-30 Kealakekua Bay ocean waters. (a) Definition. "Kealakekua Bay ocean waters" means the subzones A and B as shown on State of Hawaii map C.S.F. No. 15832 on file with the office of the state surveyor, department of accounting and general services, State of Hawaii. A copy of which is designated Exhibit "A" attached hereto and made a part hereof. (b) Restrictions. No person shall operate, anchor or moor any vessel in such manner as will injure or damage any marine life or geological features and specimens within the Kealakekua Bay ocean waters. Without limiting the generality of the foregoing, no person shall anchor or moor any vessel within subzone A, except at locations or mooring buoys designated by the department; provided, that this paragraph shall not apply to persons engaged in rescue operations or in case of emergency requiring such action as may be necessary to prevent loss of life or destruction of property. [Eff 2/24/94] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

Kealakekua Bay State Historical Park

Kealakekua Bay State Historical Park is located at the end of Napoopoo Beach road, which is accessed via Government Road from Puuhonua Road (Hwy. 160) or via Lower Government Road from Mamalahoa Highway (hwy. 11) at Captain Cook or Keei Junction. The park is the site of the first extensive cultural contact with the arrival of Captain Cook in 1779. Activities at the park include viewing of the Hikiau Heiau, a traditional religious site and the Captain Cook Monument, which sits at a distance across Kealakekua Bay and is only accessible to the public via the water. The park is 4 acres in size and consists of a parking lot, picnic areas, a picnic pavilion and restrooms.

“Commercial activity” means the use of or activity in a state park for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise, demanding or requesting gifts, money, or services, except as allowed by Chapter 13-7, shall be considered commercial activity. Commercial activities include activities whose base of operations are outside the boundaries of the state park, or provide transportation to or from the state park. [Eff. 12/09/02; am]

HAR §13-146-68 Commercial activities. No person shall engage in commercial activities of any kind, without a written permit from the board or its authorized representative. [Eff 12/9/02] (Auth: HRS §184-5) (Imp: HRS §184-5)

HAR §13-46-11 Archaeological and historical features. No person shall appropriate, damage, remove, excavate, disfigure, deface, or destroy objects of antiquity, prehistoric ruins and monuments; provided, however, that the board or its authorized representative may permit qualified persons or institutions to examine ruins, excavate archaeological sites and gather objects of antiquity. [Eff 4/16/90; comp June 08 1999] (Auth: HRS §184-5) (Imp: HRS §§184-5, 6E-7)

HAR §13-146-13 Boating. (a) No person shall operate, leave unattended, beach, park, or launch vessels, as defined in section 200-6, HRS, including but not limited to boats, motorboats, houseboats, rowboats, powerboats, jet skis, sailboats, fishing boats, towboats, scows, flatboats, cruisers, motor vessels, ships, barges, tugs, floating cabanas, party boats, charter boats, windsurfers, catamarans, ferryboats, canoes, rafts, kayaks, or any similar buoyant devices permitting or capable of free flotation where prohibited by the posting of appropriate signs, 146-7 except with the written authorization of the board or its authorized representative, or in cases of emergency. (b) No person shall moor or anchor vessels as defined in subsection (a) without the written permission of the board or its authorized representative, except anchoring in cases of emergency. [Eff 4/16/90; am and comp June 08 1999] (Auth: HRS §184-5) (Imp: HRS §184-5)

HAR §13-146-35 Sanitation and Litter. (g) No person shall urinate or defecate on the premises other than in the toilet facilities provided.

Conservation District

The Office of Conservation and Coastal Lands also has regulatory authority on uses in the Conservation District in the area. The land and waters of Kealahou Bay represent four of the five subzones of the conservation district. The waters of Kealahou Bay are designated as Protective Subzone (P). The land near shore is designated as Resource Subzone (R). The upper pali area is a mix of General Subzone (G) and Limited Subzone (L) zones. Thus any permanent structure within these Subzone must receive a CDUA from BLNR prior to building and/or installation.

HAR §13-5-10 Subzones; generally. (a) There are hereby established subzones within the conservation district, as listed in Exhibit 1, entitled "Subzone Designations, dated December 13,2002." Subzone designations of conservation district lands are delineated on maps on file with the department. [Eff APR 10 2003](Auth: HRS §183C-3)(Imp: HRS §183C-4) (b) Lands in the conservation district are classified into one of the following subzones: (1) Protective; (2) Limited; (3) Resource; (4) General; or (5) Special. (c) Land uses permitted in a subzone shall be restricted to those uses provided for in this chapter. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

HAR §13-5-11 Protective (P) subzone. (a) The objective of this subzone is to protect valuable resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas. (b) The (P) subzone shall encompass (1) Lands and waters necessary for protecting watersheds, water sources, and water supplies; (2) Lands and waters necessary for the preservation and enhancement of designated historic or archaeological sites and designated sites of unique physiographic significance; (3) Areas necessary for preserving natural ecosystems of native plants, fish, and wildlife, particularly those which are endangered; and (4) All land encompassing the Northwestern Hawaiian islands except Midway island. (c) Identified land uses in the protective (P) subzone are restricted to those listed in section 13-5- 22. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

HAR §13-5-12 Limited (L) subzone. (a) The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities. (b) The (L) subzone shall encompass: (1) Land susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention by the county, state, or federal governments; and (2) Lands necessary for the protection of the health, safety, and welfare of the public by reason of the land's susceptibility to inundation by tsunamis, flooding, volcanic activity or landslides, or which have a general slope of forty percent or more. (c) Land uses permitted in the limited (L) subzone are restricted to those listed in section 13-5-23. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS§183C-4)

HAR §13-5-13 Resource (R) subzone. (a) The objective of this subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. (b) The (R) subzone shall encompass: (1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks; (2) Lands suitable for growing and harvesting of commercial timber or other forest products; (3)

Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking; (4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone; (5) Lands and state marine waters seaward of the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves on shore to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone. (c) Land uses permitted in the resource (R) subzone are restricted to those listed in section 13-5- 24. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

HAR §13-5-14 General (G) subzone. (a) The objective of this subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature. (b) The (G) subzone shall encompass: (1) Lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use; and (2) Lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when the facilities are compatible with the natural physical environment. (c) Land uses permitted in the general (G) subzone are restricted to those listed in section 13-5- 25. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

Authority to Issue Short Term Agreements

Hawaii Revised Statutes (HRS Chapter 102) permits DLNR, and others, to issue concession agreements under the following (relevant language from the statute):

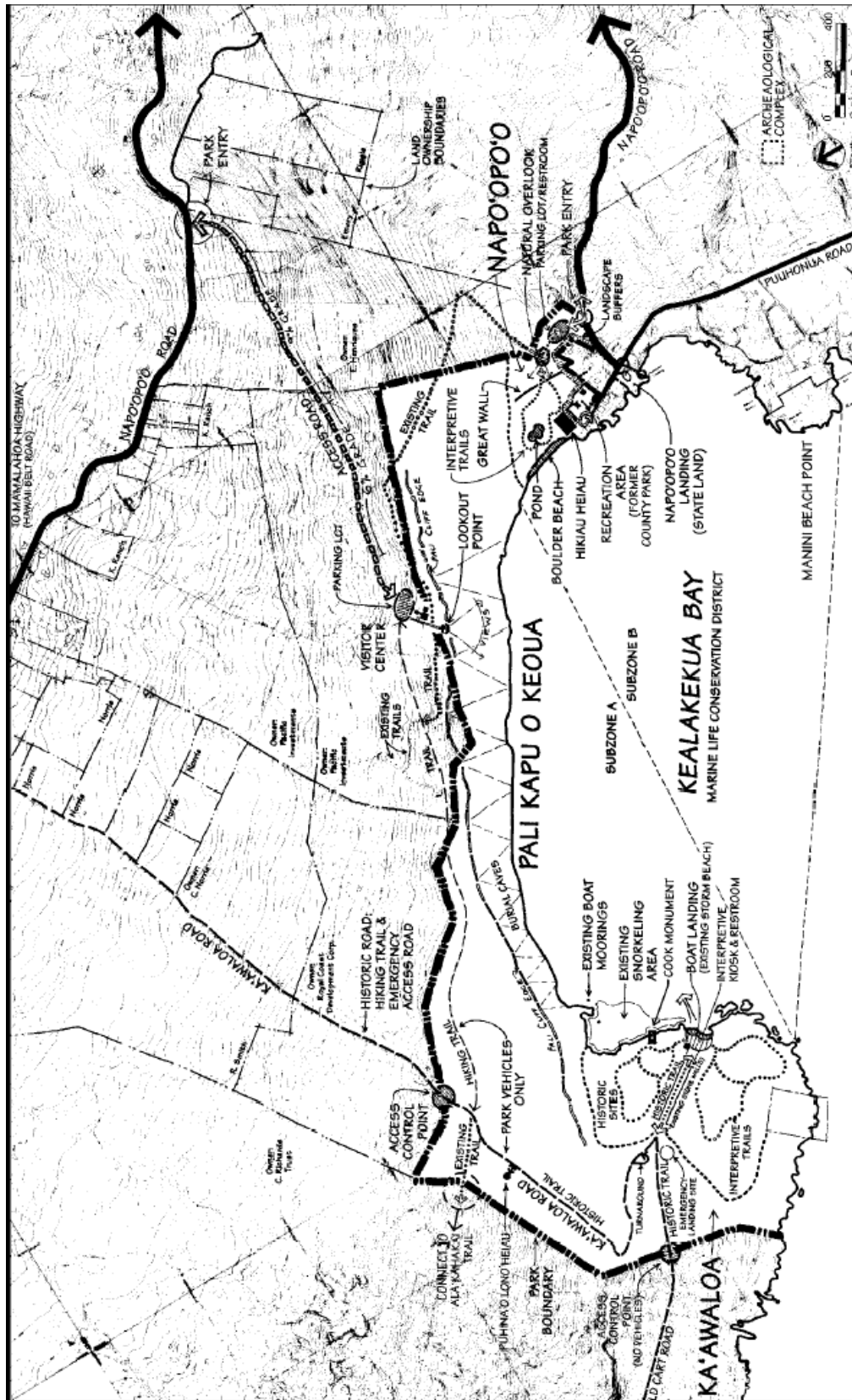
HRS §102-1 Definition. The word "concession" as used in this chapter means the grant to a person of the privilege to:

(1) Conduct operations involving the sale of goods, wares, merchandise, or services to the general public including but not limited to food and beverage establishments, retail stores, motor vehicle rental operations under chapter 437D, advertising, and communications and telecommunication services, in or on buildings or land under the jurisdiction of any government agency;

HRS §102-2 Contracts for concessions; bid required, exception. (a) Except as otherwise specifically provided by law, no concession or concession space shall be leased, let, licensed, rented out, or otherwise disposed of either by contract, lease, license, permit or any other arrangement, except under contract let after public notice for sealed bids in the manner provided by law; provided that the duration of the grant of the concession or concession space shall be related to the investment required but in no event to exceed fifteen years.

(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

(7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one-year period;



State Park Master Plan 1

HAR §13-256-3 sets forth rules for commercial operator permit requirements.

Permits for Business Activities at Boating Facilities

HAR §13-231-51 Business activities. No person shall engage in any business or commercial activity at any small boat harbor or other small boat facility without: (1) Prior written approval of the department; or (2) The proper execution of an agreement with the department. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-4)

RECREATIONAL USE OF THE BAY:

Kealakekua Bay is one of the most popular ocean recreation areas on the Big Island. This is somewhat unusual because there are no significant sand beaches on the shoreline of the bay, and it is, therefore, poorly regarded for swimming and sunbathing, the two most popular shoreline activities in Hawaii.

It is the bay's natural beauty, its sheltered location, and especially its appeal as a snorkeling area that has made it popular for ocean recreation, even though access to the most desirable snorkeling area in Kaawaloa Cove is primarily by boat. In addition to snorkeling, scuba diving and kayaking are among the most popular activities in the bay. (Park Plan)

Controlling and regulating the recreational use of the bay is key to maintaining an acceptable level of use in the bay. Determining an acceptable level of use should be based on 1) avoiding adverse impacts to the resources, 2) maintaining the historical setting for the historical park, and 3) providing a satisfactory visitor experience. Much of the responsibility for maintaining an acceptable level of use lies with DOBOR. (Impacts by Public Access)

Recent Data on Kayak Use:

Napoopoo community members and members of *Malama Pono Keala o ke akua* initiated a daily count of kayaks and passengers entering Kealakekua at the Napoopoo Wharf and nearby access points.

Here is a summary of their data:

Date	Number of Kayaks	Number of Passengers
August 11, 2005	129	238
August 12, 2005	96	190
August 13, 2005	97	170
August 14, 2005	86	164

This indicates an increase in activity over the period in 2001 when the Department evaluated visitation at Kaawaloa.

Date	Number of Kayaks	Number of Passengers
July 26, 2001	56	99
October 13, 2001	32	57

DLNR INVOLVEMENT IN KEALAKEKUA:

Jurisdiction for the management of the resources and controls over visitation of Kaawaloa and Kealakekua Bay lies with six different divisions within the Department of Land and Natural Resources. The potential for overlapping jurisdiction, different sets of rules and regulations, and the absence of a set aside for Kealakekua Bay State Historical Park, create confusion for the public when issues and concerns arise. (Impacts by Public Access)

Division of Aquatic Resources:

Division of Aquatic Resources (DAR) - Jurisdiction over the Marine Life Conservation District (MLCD) that encompasses most of Kealakekua Bay. (Impacts by Public Access)

DAR also oversees the West Hawaii Fishery Management Area.

Division of State Parks:

Division of State Parks - Jurisdiction over Kealakekua Bay State Historical Park

Division of Boating and Ocean Recreation:

Division of Boating and Ocean Recreation (DOBOR) - Jurisdiction over the recreational activities in the bay and the wharf property at Napoopoo through Executive Order (E.O.) 3706 in 1997. (Impacts by Public Access)

Kealakekua Bay Ocean Waters are within the West Hawaii Ocean Recreation Management Area also known as the West Hawaii ORMA. Rules governing this area are in Hawaii Administrative Rules Chapter 13 256-150. DOBOR rules also regulate activities at Napoopoo Landing. Napoopoo Landing (TMK 8-2-04:15) is located approximately 40 miles northeast of Ka Lae Point on the southwest coast of Hawaii and encompasses .77 acres. The Landing is adjacent to the village of Napoopoo and has a depth of 4 feet. The Landing was built prior to 1880 and was built for freight landing and agricultural transport.

Land Division:

At the August 12, 2005 meeting of the Board of Land and Natural Resources, the BLNR approved a Management and Construction Right-of-Entry for park and related purposes to the Division of State Parks from the Land Division.

Land Division (LD) - The Land Division has jurisdiction over the unencumbered State lands.

Division of Forestry and Wildlife:

Division of Forestry and Wildlife (DOFAW) - The Na Ala Hele Trails Program has jurisdiction over the Ala Kahakai trail that runs across the top of the *pali* and within the designated park boundaries. (Impacts by Public Access)

Division of Historic Preservation:

Historic Preservation Division (SHPD) - Does not have management jurisdiction, but reviews and approves projects within the Kealakekua Bay Historical District. (Impacts by Public Access)

The National Register of Historic Places, kept by the National Park Service, encompasses significant properties nominated by State and Federal agencies, historic areas in the National Park System and all National Historic Landmarks. It is the official list of the country's cultural resources. On December 12, 1973 the Kealahou area was designated as the Kealahou Bay Historical District (District w/multiple sites) Site #10-47-7000 and placed on the National Register of Historic Places.

In 1968 the Department of Land and Natural Resources contracted for a study of the Kealahou area. The subsequent study entitled "The South Kona Coast Historic and Recreation Area, Island of Hawaii" was written by Thomas H. Creighton and George S. Walters and was one of the first works dedicated to studying Kealahou historic area.

Division of Conservation and Resource Enforcement:

Enforcement of laws, rules and regulations of the department and divisions. (Impacts by Public Access)

(DOCARE) is responsible for enforcement activities of the Department of Land and Natural Resources. The division, with full police powers, enforces all State laws and rules involving State lands, State Parks, historical sites, forest reserves, aquatic life and wildlife areas, coastal zones, Conservation districts, State shores, as well as county ordinances involving county parks.

Office of Conservation and Coastal Lands:

Besides the six divisions mentioned above, the Office of Conservation and Coastal Lands also has regulatory authority on uses in the Conservation District in the area. Kealahou Bay, as well as the area of Napoopoo, is designated as Protective Sub Zone of the Conservation District. The Protective Sub Zone is the most restrictive Zone in the conservation district. Thus any permanent structure within the Protective Sub Zone must receive a CDUA from BLNR prior to building and/or installation.

Executive Orders

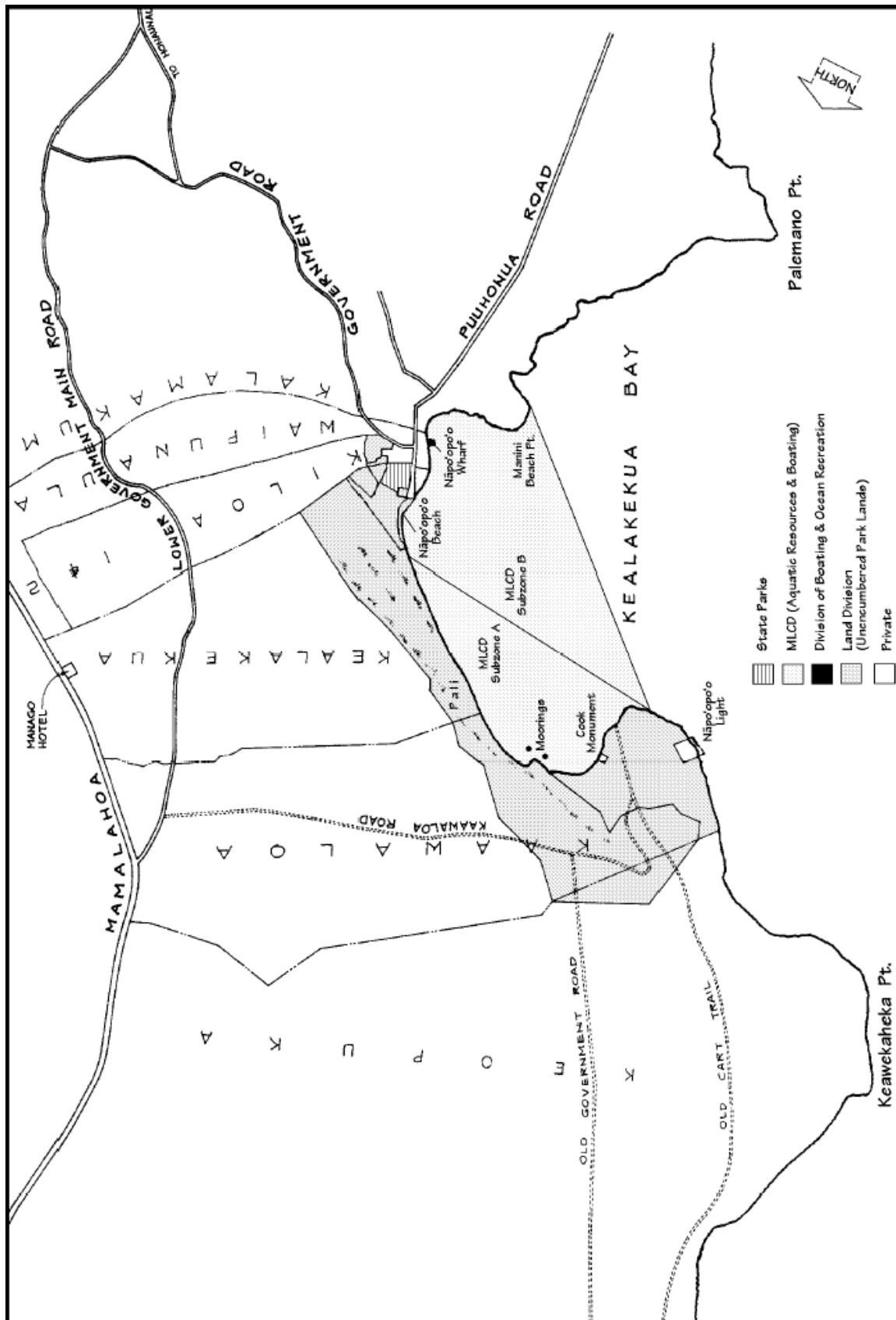
In 1971 Executive Order #02550 designated the Kealahou Bay Marine Life Conservation District for park purposes and transferred control and management of the MLCD to the Division of State Parks. Thus creating the State's second "underwater park" with Hanauma Bay on Oahu being the first.

In 1997 Executive Order #3706 designated that the Kealahou Bay Marine Life Conservation District be under the control and management of the Division of Boating and Ocean Recreation. Management of the Bay remains under DOBOR control.

COLLABORATION:

DLNR Ranger Program

Rangers were first used at Ahihi Kinohiwa Natural Area Reserve on Maui. Their presence in the area has been so effective that DLNR would like to expand the ranger position to other areas across the state including at Kealahou.



The ranger position will help to better manage recreational use of the bay for the protection of the resource and the enjoyment and safety of visitors and residents. The ranger program significantly supports efforts to “manage, improve, and protect”. The addition of a ranger will add to the visitor experience, and it will also help to protect Hawaii’s natural resources so they may be enjoyed for generations.

Rangers will interact with visitors to promote an understanding, awareness, and respect for the natural and cultural resources and the recreational opportunities through one-on-one discussions, and interpretive talks. This visitor interaction will provide information on rules and regulations, health and safety concerns, resources and the cultural and natural history of the area.

By maintaining an active presence in the form of a ranger, visitors will be better prepared for their visit and DLNR will have better management of the area. Their duties will include:

Resource Protection: While roaming the area to interact with visitors, the ranger will also be patrolling the area for illegal or harmful activities that damage the resource. While the ranger will not serve as a law enforcement officer, he or she will address issues by educating visitors to increase awareness. In situations where significant illegal activities occur, the rangers will be able to notify a conservation officer. Rangers will also be responsible for regularly monitoring the condition of the natural and cultural resources and report resource management needs to the appropriate DLNR department staff.

Public Safety: By increasing visitor awareness, the ranger will decrease the chance of visitors encountering harmful situations. Much like a roaming lifeguard, their presence will also increase safety in the area due to their training and access to communication support.

Information and Education: Rangers will interact with visitors and resource users to promote an understanding, awareness, and respect for the natural and cultural resources and the recreational opportunities through one-on-one discussions, and interpretive talks.

Makai Watch

Communities are becoming aware of their ability to take more active roles in resource protection and thus the department formalized the Mauka-Makai Watch program. This program brings together all of the previously established programs and enhances and expands their efforts to more actively involve communities and the department in community resource protection.

The Mauka-Makai Watch concept is very similar to the Neighborhood Watch Program in which community members act as the “eyes and ears” for the Police Department to help deter, identify, and report crimes. When Neighborhood Watch members observe a crime or suspicious behavior, they have a direct line to the Police Department and, depending on the situation, the Police can choose to send out patrol officers.

Neighborhood Watch volunteers understand that the active participation of neighborhood residents is a critical element in community safety. Similarly, Mauka-Makai Watch volunteers have a presence in our natural and cultural resources areas to help act as the eyes and ears for resource managers and regulators.

It is DLNR's belief that the people who use, live closest to or are involved with the resources are in the best position to help in ensuring compliance with resource protection and preservation.. Further, active participation of communities and constituency groups is a critical element in community health and safety - not through vigilantism or exclusion, but simply through a willingness to help prevent wrong-doing through presence and education, look out for suspicious activity, monitor and care for the resources, and report inappropriate activity to law enforcement and to each other.

With momentum building for this type of community program, DLNR decided to focus specifically on a Makai Watch program centered on the coastal areas of Hawaii. DLNR has partnered The Nature Conservancy (TNC) and the Community Conservation Network (CCN) in its Makai Watch effort. DLNR first initiated the Makai Watch program in the Miloli'i and Wai 'Opae communities, both on the Big Island.

These programs as well as others across the State have continued to grow. Makai Watch serves as a vehicle in helping people "make a difference" in their own community. A goal of Makai Watch is to help ensure that community members support DLNR and other resource managers and regulators in education, regulation, monitoring and observation to protect our natural and cultural resources.

Kealahou is an ideal location to begin a Makai Watch program. There is already immense community involvement, participation and dedication for the area. A Makai Watch program would serve as a tool for management by educating visitors as well as volunteers who would in turn patrol the area. An increased presence at the bay, wharf and park would deter illegal activities as well as offer a contact point for visitors.

TNC along with CCN have chosen Kealahou as a location for the expansion of their Makai Watch program. TNC already has staff on the Big Island that has been working with the community on resource issues at the Bay. The hiring of a Makai Watch Coordinator for the area will be the first step in establishing a successful program at the Bay. This Coordinator will work with the DLNR ranger in providing an increased presence at the Bay for better management and visitor interaction.

County of Hawaii General Plan

The County of Hawaii's General Plan was updated in 2002 and is the policy document for the long-range comprehensive development of the island of Hawaii. The County sees great value in Kealahou Bay and its surrounding communities. The plan sites specific areas of special concern at Kealahou Bay.

Public Utilities

- Courses of Action - Continue to work with the Departments of Health and Land and Natural Resources to preserve the Class AA water quality of Kealahou Bay.

Historic Sites

- Courses of Action - Encourage the development of a historic park at Kealahou Bay and protect historic sites and scenic aspects of the area. Provide a conservation buffer around Kealahou Bay.

Recreation

- Courses of Action (South Kona) - Establish buffers on undeveloped lands around Kealahou Bay to assure preservation of the region's unique environment and cultural resources.

Natural Beauty

- Kealahou Bay from Kaawaloa Road and Lower Government Road including Keopuka, Kaawaloa, Kaawaloa, and Kealahou Bay are listed in the Plan as sites of natural beauty in the District of South Kona.

NOAA Fisheries

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) is dedicated to the stewardship of living marine resources through science-based conservation and management, and the promotion of healthy ecosystems. As a steward, NOAA Fisheries Service conserves, protects, and manages living marine resources in a way that ensures their continuation as functioning components of marine ecosystems, affords economic opportunities, and enhances the quality of life for the American public.

NOAA Fisheries is guided by the Endangered Species Act, which protects species determined to be threatened or endangered as well as the Marine Mammal Protection Act, which regulates interactions with marine mammals. Thus, they have a great interest in Kealahou Bay due to its abundance of marine mammals. In the past NOAA Fisheries has engaged the Kealahou Bay communities in the resource management and protection of Kealahou Bay's marine mammals and assisted in community dialogue related to conflicts between bay users and marine mammals. With the establishment of a Marine Mammal Working Group recently, NOAA is committed to developing and strengthening their outreach and enforcement regarding Marine Mammals. DLNR welcomes their effort and will partner with them to spread the message of wise stewardship of Hawaii's marine mammals.

Community Groups

Community groups continue to be active within the Kealahou Bay community. Many residents of the area have family ties to the bay and surrounding lands. Their deep connection to the bay offers a unique perspective in management and protection of the bay and surrounding lands.

Many meetings have been convened to talk in length about Kealahou Bay, current issues and proposed solutions.

PROPOSED INVESTIGATION OF RULES AND RELATED ACTIONS:

This BLNR submittal addresses a variety of issues related to Kealakekua Bay. It focuses on the Land Board's priority policy of protecting the natural and cultural resources. Over the past few years there has been concern that the resources may be impacted due to increasing human use.

Part of this submittal also addresses various ocean recreation activities and the need to better manage these activities to assure protection of the Bay's resources. In the past, there have been attempts to better manage the area. Through this submittal we are suggesting that it is time to take action.

Based on this review, the following summarizes some of the findings and recommendations that were suggested in the past. Many of these recommendations continue to be valid and are ultimately incorporated into the final recommendations in this submittal.

Recent Scientific Studies on Impacts

Many scientific reports and studies have addressed the marine life of Kealakekua Bay. In 2000 and 2003 studies were conducted at Kealakekua Bay to determine whether or not the existing levels of human activity negatively impact the Bay's ecosystem. In addition, some of the studies provide recommendations to mitigate potential impacts.

In 2000, a report by Tissot & Hallacher concluded that:

"The results of this study found no significant differences between impact and control sites in changes in coral cover, or the incidence of bleached and broken coral. Therefore, there is no statistical support for the premise that divers at Kealakekua Bay are causing damage to the reef. However, in all cases the decline in coral cover and the incidence of bleached and broken coral was higher at the impact relative to the control site."

A 2003, a report by Holland & Meyer concluded that:

"The majority (>75%) of substrate contacts observed at Kaawaloa Cove occurred where shore-based snorkelers entered and exited the water. Substrate contacts were strongly clustered around the kayak landing site and generally concentrated in shallow (<1m) areas along the shoreline. With the exception of the kayak landing area, substrate contacts were not concentrated in the most intensively used areas (e.g., reef shelf adjacent to the Cook Monument). Very few (2%) substrate contacts resulted from boat-based activities. Most observed contacts (85%) were with uncolonized rock substrate in shallow areas (<1m). Contacts with live coral (11% of observed substrate contacts) extended into deeper areas at Kaawaloa Cove but were less frequent than contacts with uncolonized rock."

The report recommended the following actions to monitor human recreational use of the Bay:

"Present patterns and levels of recreational use at the four MPA sites appear to be sustainable but an ongoing monitoring effort (e.g., Tissot & Hallacher 2000) should be maintained to ensure that the cumulative effects of minor damage does not cause major degradation of corals over longer time scales."

“A significant increase in the number of SCUBA divers visiting Honolua, Kealakekua or Manele Bays should be avoided because is likely to result in higher rates of damage to susceptible coral species (e.g., *P. compressa*) that are a common component of the benthic assemblage at these sheltered sites.”

“A single pre-dive briefing has shown to significantly reduce diver coral damage in other areas (Medio et al. 1997), these should be mandatory on all commercial snorkel and SCUBA diving tours. Finding effective methods for briefing shore-based snorkelers & SCUBA divers (who are responsible for the majority of substrate contact) could further reduce impacts on corals at Hawaii MPA sites.”

Thus, these conclusions and recommendations show that land-based activities have more affects than the water-based activities in the Bay. A primary concern is that frequent physical contact with the substrate will result in extensive damage to corals and other fragile habitats. Thus, any future recommendations need to address these concerns and help protect the Bay’s resources.

2001 Commercial Operators Recommendations

Over the years there have been many attempts to create better management of the Bay. In 2001, commercial operators at the Bay developed recommendations to better manage commercial operations in the Bay. These recommendations were never implemented and although they are four years old, many of the ideas are still relevant today.

- Permits should be issued to commercial operators
- Docent program
- Maximum number of vessels in the snorkel area at any given time
- Creation of vessel exclusion zone
- Payment of fees

2001 Kealakekua Intradepartmental Working Group Recommendations

Similarly in 2001, the Kealakekua Intradepartmental Working Group, with community input made recommendations as well.

- Vessel kapu area
- Commercial use kapu area
- Limit of 4 commercial guided tour kayak permits
 - Maximum of 8 in individuals per permit
- Limit of 4 commercial kayak rental permits
 - Maximum of 10 kayaks per permit
- Maximum of 6 permits for commercial motorized vessels
 - Maximum vessel length not to exceed 30’
 - 20 passengers per vessel
- All commercial operators prohibited from sunset to sunrise
- Any recreation group exceeding 10 individuals shall obtain a special use permit
- Establishment of an education program

2002 Report to the Legislature Recommendations

In 2002 the department submitted a report to the Legislature on activities in Kealahou Bay. The Legislative Report outlined amendments and recommendations for management of the Bay that addressed similar issues and further suggested recommendations such as:

- Establish a sanctuary where the dolphins rest
- An education program for Bay guests
- A natural and cultural briefing for Bay guests
- Installation of interpretive signage
- Promotion of guided tours
- Vessel exclusion area
- Permits should be issued to commercial operators
- Staggered commercial activity
- No landing at Kaawaloa
- “Ambassador” presence

Recommendations in this Action

These past recommendations help to form the foundation of the recommendations and suggested amendments to rules and procedures that are proposed in this submittal.

Capacity Concerns

The department recommends “permitting” existing commercial activities within the Bay and evaluating potential future negative impacts.

As noted in the recent natural resource monitoring studies referenced in this submittal, the existing level of human use has not negatively impacted the natural resources within the Bay.

However, there is a particular concern regarding the peak periods of human use within the snorkel area. Prior recommendations suggested that capacity concerns can be mitigated by staggering the times that commercial operators are at the Bay. The recommendations in this submittal will include provisions to distribute human use throughout the day to avoid unmanageable numbers of human activity during peak periods. Another means may be to limit the number of boats within the bay at any time.

The department has investigated a variety of ways in which it may regulate the number of commercial activities within the bay at one time. Molokini MLCD off of Maui provides an example of one way to deal with capacity issues. At Molokini there are 28 moorings, however there are 41 permits issued to commercial operators to moor at Molokini. Thus not all operators may moor at Molokini at one time. Instead, the operators are required to work together to accommodate each other.

This type of system is proposed for Kealahou where the drift-in and kayak commercial operators would work together (with the Department) to stagger their times and numbers in the bay. Similarly, the kayak operators would also be required to work together to stagger their tours in the bay. Thus, while any number of permits could be issued, only an agreed upon set amount of activity would be allowed in the bay at any given time.

In the Preliminary rules developed in 2001, a total of 4 commercial kayak tours companies and a total of 6 commercial drift-in operators were to be permitted. In the 2001 commercial operator recommendations, the drift-in operators limited their snorkeling time to two hours. Thus, the current operators should be able to work together to stagger their times so that all operators may be accommodated – however, not necessarily at their exiting amounts.

Similarly, in a letter submitted by the Hawaii Island Kayak Association that represents four kayak operators, the Association recommends each kayak company be permitted to conduct only two tours per day.

Provisions will be incorporated into every permit that will allow the department to stagger and monitor activities, and amend and/or terminate the privileges extended in the permit in the event there is evidence of negative impacts.

Establishment of a “Kapu” Zone C Along the Base of Pali Kapu O Keoua

There is a definite concern for the safety of humans in and around the dolphin resting area, as well as concern for impacts to the dolphins and other resources in the dolphin resting area. A “kapu” (prohibited access) area is needed to ensure the safe and proper management of commercial and recreational activities within Kealakekua Bay. Thus, proposed amendments to HAR 13-29-1 and 13-29-2, Kealakekua Bay MLCD, will include creation of a subzone C and prohibition of entry into subzone C except for department personnel or by permit.

Amendments to HAR 13-244-30, Kealakekua Bay Ocean Waters, are also proposed and include creation of a subzone C and prohibition of entry into subzone C.

Finally, creation of HAR 13-256-165, Kealakekua Bay Ocean Waters, within the West Hawaii ORMA, will also contain a subzone C and prohibit entry into the zone.

Kaawaloa Landing Prohibition

In order to protect the resources, both in and out of the water at Kaawaloa, especially the shallow reef, from vessel damage, the launching and landing of any type of vessel (kayaks, boats etc.) at Kaawaloa needs to be limited. Rule changes are proposed that will prohibit landing and launching activity of vessels. The department intends on establishing designated entry and exit locations and procedures at Kaawaloa for individuals to swim to get in and out of the water.

Thus, proposed amendments to HAR 13-29-2, Kealakekua Bay MLCD, and HAR 13-256-165, Kealakekua Bay Ocean Waters, and creation of HAR 13-256-165 (c) will include prohibition of launching or landing of any vessels at Kaawaloa.

Provisions within the rule amendments will allow for launching and landing at Kaawaloa by department personnel and by permit for appropriate uses. Additional launching and landing will be allowed for light, monument and wharf maintenance, health and safety, emergencies and enforcement activities.

State Park HAR §13-146-13, allows for the prohibition of vessel landings and launching at State Parks, where prohibited by the posting of appropriate signage. Therefore, to prohibit the launching and landing of vessels at Kaawaloa, signage needs to be posted at Kaawaloa. The department is concerned, however, that conventional signage may not be culturally appropriate for the area. The option of drafting rule changes will also prove difficult since the rule pertains to the entire state park system, not just Kealahou. Thus, the department proposes to work with the community and others to develop appropriate signage that is culturally sensitive and educates park guests of the area's cultural importance.

Kayak Moorings

In an effort to further protect the Bay's resources and manage the use of Kaawaloa, the department is seeking permission to install kayak mooring buoys near Kaawaloa to be shared by all kayak users. Groups of kayakers are to "raft" together on a single mooring to decrease their impact on Kaawaloa. DLNR has the authority to authorize the mooring of a vessel at mooring buoys designated by the department within subzone A through HAR §13-244-32(b).

Commercial Permits (in General)

In order to better manage the Bay's activities and consistent with prior recommendations, the Department is recommending the Board authorize the Chairperson to negotiate and enter into permit agreements with commercial operators that use the Bay.

This submittal covers the three types of commercial activities within the Bay 1) Kayakers 2) Drift-in Snorkel/dive and 3) Boat moorings (i.e. Fair Wind). None of the commercial operators, regardless of their activity, will be allowed to launch or land at Kaawaloa.

Permits - Commercial Kayakers

In order to better manage the Bay's commercial activities, the Department is recommending the Board to authorize the Chairperson to negotiate and enter into permit agreements with commercial kayak operators to launch and land at Napoopoo wharf. HAR 13-321-51 authorizes the Chairperson to negotiate and enter into permits for less than 1 year.

These permits will allow the department to manage these activities to better protect the Bay's natural and cultural resources. The permit will allow the Department to require the permittees (operators) to stagger their visits to the Bay and at Kaawaloa Cove. This will minimize "overcrowding" at peak hours and minimize impacts on the Bay's resources, while providing for a better experience for the guests.

The department is also suggesting that a reasonable fee (\$5 per person) be charged to the operators for the additional privilege each enjoys by being permitted to conduct commercial activities in the Bay as well as launch and moor within the bay.

The \$5 charge is based on prior Land Board approvals for kayak tours in other areas across the state. The first \$5 per person charge was issued for an experimental permit for kayak tours at Makua Beach on Oahu. Earlier this year, the Land Board approved a \$5 charge per person for kayak tours along the Na Pali Coast of Kauai.

This fee was based upon the Makua permit, as well as an independent appraisal that was done for kayak tours along the Na Pali Coast. The appraisal looked at the launching and landing of kayaks along the Na Pali Coast and recommended a fee that computed to \$5 per guest per day.

The revenue from these permits will be divided as follows 1) Support to have a resource Ranger(s) stationed at Kealahou 2) Buoy maintenance 3) Operation and maintenance of portable toilets at Napoopoo Wharf and possibly other locations and 4) Any balance split 1/4 - 1/4 - 1/4 between DAR, DOBOR, Parks and DOCARE.

One of the rationales behind the permitting of commercial kayak tours within the Bay is to provide the best possible way to organize and manage kayak activities within the bay. It is the department's belief that many customers that currently rent kayaks in Kealahou Town, would prefer the alternative of taking a guided kayak tour for added safety, convenience and the personalized attention such a tour provides.

Studies have shown that the impacts on resources are reduced when people are educated and informed. The permit will require and thus ensure that this education takes place and that their customers are provided a safe and informational tour of the bay.

Offsite Kayak Rentals

An obvious challenge in the management of Kealahou Bay is how to address operators who do not conduct guided tour but instead only rent kayaks to individual's offsite. We believe, even with the opportunity to operate guided kayak tours, some operators will continue to rent kayaks to individuals. The department faces the challenge of ensuring that these operators will be part of the process and pay appropriate fees for their client's use of the bay.

In order to address these issues, the department would like the Board to authorize the Chairperson to investigate and implement alternatives that will require offsite rental operators to pay the same fee of \$5 per kayak for those kayaks that ultimately end up being used within Kealahou Bay.

The department has been alerted to a rental "scheme" that may be used to circumvent the proposed fee process. Rental operators "sell" a kayak to a customer who, at the end of the day, "sells" the kayak back to the rental operator. Thus the transaction is no longer a "rental". Any program to assess fees to the rental operators will also consider this "scheme".

Permits - Commercial Drift-In Snorkel/Scuba

Currently there are four drift-in operators that use the bay and hold permits to launch from DOBOR facilities.

- Zodiac Adventures (aka Captain Zodiac) - Five vessels (1-6 capacity, 1-16 capacity, 2-18 capacity and 1-20 capacity), that launch from Honokohau Harbor
- Sea Quest - Four vessels (2-6 capacity and 2-12 capacity) that launch from Keauhou
- Merrill Inc. (aka Dolphin Discoveries) - Three vessels (1-6 capacity, 1-18 capacity and 1-20 capacity) that launch from Keauhou

- Sea Paradise - One vessel with a capacity of 46 passengers, that launches from Keauhou

Besides the four operators above, there are other operators who use the bay on a less frequent basis. These operators would be subject to the same permits and conditions as the four operators listed above.

Similar to the commercial kayak permits, the department is recommending the Board authorize the Chairperson to negotiate and enter into permit agreements with drift-in snorkel and scuba operators with conditions and access protocols that address resource protection measures. These operators may enter the Bay via motor or sailboat and drift in the Bay while customers snorkel and/or scuba.

As with the commercial kayak operators, the drift-in snorkel and scuba permittees will pay the department a permit fee that will be used in the same fashion as the kayak permits – pay for the costs associated with placing a Ranger at Kealahou, buoy maintenance at Kealahou, operation and maintenance of toilets and the balance split evenly between DAR, DOBOR, Parks and DOCARE. The department will require the permittees to stagger their use of the Bay.

Since the drift-in snorkel/scuba operators do not launch or land at the bay, the department proposes having their permit fee be less than the operators who launch, land and moor at the bay. Additionally, the drift-in operators, unlike the kayak operators and Fair Wind, do not have a designated area to launch and land and instead drift within the bay. Thus, the drift-in snorkel/scuba operators would pay a fee of \$3 per person per day for their permit.

Additionally, the permit addressing scuba operations will state that only experienced certified (“card carrying”) scuba divers will be permitted to scuba dive in the Bay. No introductory or training scuba dives will be permitted in the Bay.

Kealahou Mooring Permits

Currently, there are four moorings within the Bay. Two are within subzone B and are permitted for use by Hana Like for fishing purposes only. Another operator, Hawaiian Cruises, previously used a third mooring however they did not renew their permit and thus the mooring is not used.

The fourth mooring is within subzone A and is used exclusively by Fair Wind Cruises. Fair Wind Cruises is a unique commercial entity in the bay. Fair Wind operates a 60-foot vessel named the Fair Wind II, which has a capacity of 125 passengers. Fair Wind was granted a CDUP for commercial moorings within Kealahou Bay on January 25, 1991. Fair Wind was previously issued a permit through State Parks for their use of the Bay. This permit listed 36 conditions that included:

- A fee of one-half percent (0.5%) of gross revenue
- Implementation of a discounted tour program for public school students
- Limit operations to the Bay to two trips per day by a single vessel
- Maximum capacity of the vessel is not more than 149 persons
- Pick up and remove litter accumulations in the Kaawaloa area once monthly, four (4) times per year

When the Division of Boating and Ocean Recreation was created within the Department of Land and Natural Resources, this permit was transferred from State Parks to DOBOR.

The department suggests that all commercial uses and conditions on operations within the bay need to be consistent and all rules and regulations imposed upon these operators be equitable and fair. Since the proposal is for drift-in operators to pay \$3 per person for use of the bay and Kayak operators to pay \$5 per person for use of the bay as well as launching and landing, the department believes Fair Wind's permit should be evaluated for consistency at its anniversary renewal. This could include a change in fees and operational protocols to be consistent with other commercial activities within the bay.

Fair Wind's current permit expires on April 30, 2006. This permit will be brought before the Land Board prior to its expiration. Until then, Fair Wind will be allowed to follow their current operations under their existing permit.

This will give the department time to evaluate the drift-in and kayak permits to see if further issues need to be addressed or permit conditions need to be modified for all permits.

The moorings within Kealahou Bay have been used in the past to accommodate boats in need of refuge from storms and other natural hazards. This practice will continue as it has previously.

Harbor Fees

Questions have been raised regarding the proposed activity fees in this submittal and their relation to mooring and ramp use fees at the State's small boat harbors and ramps. This past Legislative session, over the Governor's veto, the Legislature instituted a fee of 3% (compared to the previous 2%) of the gross sales for commercial companies mooring or operating within a State small boat harbor or ramp. These fees are used to maintain and operate the State's small boat harbors and ramps. The fees proposed within this submittal are for the added privilege of operating a commercial activity within Kealahou Bay.

Snuba

No snuba activities, by individuals or commercial operators, will be permitted in the Bay.

Permits - Additional Terms and Conditions

The issuance of permits for commercial kayakers operators and drift-in snorkel/scuba operators will also allow the department to add conditions regarding conduct and operating procedures, including, but not limited to:

Guest to Guide Ratio

In the past, the department considered a maximum of eight guests per guide and no more than four guest kayakers (typically tandems) per guide as an appropriate ratio for safety and control by the commercial operator. This was the ratio used for kayak tours at Makua. For kayak tour at Na Pali a ratio of two guides to every twelve kayakers was established. The Hawaii Island Kayak Association, which represents four kayak operators in the area, recommends a ratio of one guide for every six kayakers.

Realizing that ocean conditions vary by region and area, as do the type of kayaks used (single, tandem, triple,) the department is recommending for Kealahou Bay the ratio of 1 guide for every six kayaks and no more than 8 guests per guide.

Safety Briefing

One of the permit conditions will be to require that, prior to entering the water, all guests must be given a safety briefing. The safety briefing will inform the guests of proper safety procedures of operating in and out of the water.

Natural and Cultural Resource Briefing

Equally important, another condition of the permits will be that all guests must be given a natural and cultural resource briefing. This briefing shall address the cultural and natural resources of Kealahou Bay, the rules pertaining to the protection of these resources and the ecological and cultural significance of the area. This briefing shall educate users of Hawaii's unique natural and cultural resources.

Print and Distribute Makai Brochure

The department developed a Makai brochure (copy attached) that provides some brief information on Hawaii's ocean and near shore environment. The operators will be required to use this brochure as a basis of their natural and cultural resources briefing and will be required to print and distribute these brochures to each guest prior to entering the water at Kealahou Bay.

Monthly Reporting of Guests

The operators, as part of their permit requirements, will also be required to keep track and report to the department monthly and annual passenger counts to Kealahou Bay. This information will assist DLNR in monitoring the visitation counts for Kealahou Bay.

Human Waste Disposal

As an interim solution, all commercial operators will be responsible to dispose of human waste from their guests. The department notes that there are many alternative portable commodes and privy tents that are lightweight, portable and relatively inexpensive and provide adequate privacy and hygiene (representative example attached).

Kaawaloa Litter Pickup

The operators, as part of their permit, will also be required to remove litter accumulations in the Kaawaloa area four (4) times per year. This will help to ensure that Kaawaloa is kept clean and sanitary and that the areas cultural resources are better protected.

Parking

Two parking areas are proposed for visitors to Napoopoo and Kealahou Bay.

- Napoopoo Landing - Commercial operators will be prohibited from parking in the Napoopoo landing area (including on the street, at the State Park pavilion site or at the pier). Members of the public who are not associated with or guests of commercial tours of the bay or surrounding area may park at this site.

- State Park parcel along Lower Government Road - All tour guests must be transported to the Napoopoo by the commercial operator. Commercial operators will be permitted to park vans and trailers at the parcel along Lower Government Road. Members of the public who are not associated with or guests of commercial tours of the bay or surrounding area may also park at this site (map attached).

Permittee at Napoopoo Landing

While the permit conditions suggested above address briefings and operating protocols for commercial operators with groups of guests in organized tours, there are many other users of the Bay that are not part of an organized group or tour. These include Hawaii residents and independent travelers to the Bay.

The resource evaluation studies have concluded that natural resources are best protected if people are informed about appropriate and inappropriate behavior. The department is not adequately staffed, nor prepared, to provide safety and resource briefings to independent visitors (whether resident or out of state) to the Bay.

In consideration of providing a means to have briefings given to the independent visitors to the Bay, the department is considering the authorization to issue a permit for kayak rentals at Napoopoo Landing who, as a condition of the permit, will be required to give safety and natural and cultural resources briefings to their customers, as well as all other independent guests to the Bay (at no additional cost to the independent visitor to the Bay (Hawaii resident or otherwise.))

It is anticipated that this permittee (a for profit or nonprofit entity) will be able to rent up to 25 kayaks, Hawaiian canoes etc. at any given time and the fee paid to the department for this commercial activity will take into consideration the added obligation that the permittee will be required to assist individuals in and out of the water, provide safety and natural and cultural resource briefings (including printing and distribution of the Makai brochure) at no charge or solicitation or expectation of gratuities to all independent visitors (Hawaii resident or otherwise) that bring their own or rented kayaks for use in Kealahou Bay.

There will always be individuals (local residents or tourists) who prefer to kayak in the bay on their own. However, the department believes that the number of these individual users will be reduced due to the alternative of permitting a guided tour of the bay.

For those that still prefer an individual experience, the department believes it is important that these users are properly educated and informed about the bay. Thus the purpose of having a permitted operator renting kayaks at the wharf is to ensure that these kayak renters are properly educated and informed about the bay. The RFP would require an educational briefing that would ensure that these users are properly educated. Additionally, the individual users would be drawn to the concession for its convenience of renting kayaks at the Wharf.

Restroom Facilities for Kayakers/Boaters

A major issue of concern, is the impact that human waste is having on the Bay and coastal areas. The only permanent restroom facilities in the area are at the park pavilion site.

Recently the local community group, Malama pono Keala o ke akua has paid for four portable toilets to be placed at Napoopoo Wharf and serviced three times per week. Community members believe these toilets have cut down on some of the human waste issues at Kaawaloa. The department would like to continue the use of these portable toilet facilities and will use the money collected from the permit fees to cover the cost of operating and maintaining these portable toilets at Napoopoo Wharf.

There are currently no restroom facilities at Kaawaloa and it is reported that many people either leave human wastes on Kaawaloa, on rocks or in the water. This has created unsanitary conditions in the area.

A few possible solutions have been discussed and include posting signs at the Napoopoo side of the Bay alerting visitors to the lack of restrooms at Kaawaloa and encouraging the use of the restroom facilities at the park pavilion and wharf site. In addition, it has been discussed that all commercial operators provide human waste facilities for their guests, the department place composting toilets at Kaawaloa, continue use of portable toilets at the wharf and/or establishing portable toilets on a floating barge using an existing mooring at Kaawaloa.

The department continues to investigate these and other options to develop a viable solution that is both sanitary and culturally sensitive.

Facility Improvements

As the popularity of Kealakekua increases, so does the amount of people wanting to experience its natural and cultural beauty. The last major facility improvement in the area occurred in 2004 with the renovation of the bathroom and pavilion facilities. Parking and traffic continue to be both a nuisance and safety concern.

The department is suggesting that additional parking on the State Park parcel along Lower Government Road, recently approved for transfer to Parks, be constructed to alleviate some of these concerns. The site is about 300 feet mauka of Napoopoo Wharf and the intersection of the Lower Government Road and Napoopoo Beach Road. This portion of land is currently vacant and could be used to expand parking opportunities in the area so visitors do not have to park on the side of the road.

Another improvement to the site will be the installation of ladders at Napoopoo Landing for safer ingress/egress for boaters, swimmers and kayakers. Currently, Bay users have to access the Bay via the wharf with no mechanism to steady them. During low tide, the space between the wharf and water level can be up to four feet. This makes it very difficult to enter/exit the water. The installation of ladders will help alleviate these safety concerns and make the Bay more accessible to those who use it.

Makai Watch

As discussed earlier in this submittal, the Nature Conservancy and CCN are partnering with the department to initiate a “Makai Watch” program at Kealakekua Bay. This program will create an added presence at the Bay in the form of education and outreach.

Rangers

The on-site presence and monitoring at Kealakekua Bay in the form of a ranger(s) is another tool the department intends on using to better manage the area. As stated previously in the submittal, the Ranger could assist in resource monitoring and visitor education and will help to better manage recreational use of the Bay for the protection of the resource and the enjoyment and safety of visitors and residents.

Working Group

In 2000, an intradepartmental working group was created to address the issues of Kealakekua Bay. This group, consisting of DLNR Kona staff from DOBOR, DAR and DOCARE, met on several occasions and discussed management recommendations and proposed rule amendments. The discussions also addressed the implementation and enforcement issues associated with these recommendations. However, over the past few years the group has become inactive. The department would like to reconvene the group at least once a year to discuss commercial permits, level and quality of visitation, the status of the resources, and enforcement/management concerns. Better and more frequent communication between the users of the Bay, the community and the agencies, which oversee its management, is needed and welcomed by all.

RECOMMENDATIONS:

- 1) Approve and authorize the department to conduct public hearings to amend HAR §13-29-1, HAR §13-29-2 and HAR §13-244-30 and add §HAR 13-256-165 to establish a “kapu” area, to be identified as Zone C. The area will be closed to all users and uses. Zone C is generally represented on Attachment 1 and proposed HAR amendments and additions are shown as Attachments 2, 3 and 4.
- 2) Approve and authorize the department to conduct public hearings to amend HAR §13-29-2 and HAR §13-244-30 and add §HAR 13-256-165 to prohibit the launching and landing by any type of vessel (kayaks, boats etc.) at Kaawaloa. Proposed HAR rules are shown as Attachments 2, 3 and 4. Authorize the department, to establish entry/exit procedure at Kaawaloa for individuals to get in and out of the water safely as well as develop appropriate signage for the area (to comply with State Park rules).
- 3) Authorize the department to conduct public hearings to amend HAR §13-29-2 and HAR §13-244-30 and add §HAR 13-256-165 to prohibit snuba activities and introductory/training SCUBA diving within Kealakekua Bay. Proposed HAR rules are shown as attachments 2, 3 and 4.
- 4) Authorize the installation of kayak mooring buoys (within Zone A) near Kaawaloa to be shared by all kayak users, recreational and commercial.
- 5) Authorize further investigation, with priority focused on culturally appropriate composting facilities, of alternatives and ultimate implementation of restroom facilities at Kaawaloa.
- 6) Authorize the construction of additional parking on the State Park parcel along Lower Government Road.

- 7) Authorize the installation of ladders at Napoopoo Landing for safer ingress/egress for boaters, swimmers, kayakers and other users of Napoopoo Landing.
- 8) Initiate, with appropriate partners, a “Makai Watch” program at Kealakekua Bay.
- 9) Authorize the department to fund (through commercial fees suggested in this submittal) and assign an on-site Ranger(s) at Kealakekua Bay to help monitor and manage uses and activities of the Bay for the protection of the resource and the enjoyment and safety of visitors and residents.
- 10) Authorize the department to reconvene the intradepartmental working group at least once a year to discuss commercial permits, level and quality of visitation, the status of the resources, and enforcement/management concerns. Incorporate all appropriate DLNR divisions in the discussions and include community representatives, Bay users, cultural practitioners, permittees and others.
- 11) In accordance with HAR 13-321-51, 13-29-4, 13-250-5, 13-256-3, 13-146-68 and HRS 190-4 and 187A-6-b, authorize the Chairperson to negotiate and enter into permit agreements, generally represented in attachment 6 and subject to Attorney General approval, with conditions and access protocols that address resource protection measures, management, that also permit watching of aquatic life, with terms not to exceed one year, with commercial kayak operators, that include permit fees of \$5 per guest per day (permit revenue to be divided as follows: first, cover costs and expenses related to the resource ranger stationed at Kealakekua Bay, kayak mooring buoy maintenance and operation and maintenance of portable toilets, other associated costs in the Bay, then, any balance to be divided 1/4 - 1/4 - 1/4 - 1/4 between DAR, DOBOR, Parks and DOCARE.) Permittee shall be required to conduct safety and natural & cultural resource briefings prior to entering the water at Napoopoo Wharf.
- 12) Authorize the chairperson to investigate and implement actions, including assessing a fee of \$5 per kayak, to address the management of rental operators who rent kayaks offsite whose guests ultimately end up being used within Kealakekua Bay.
- 13) In accordance with HAR 13-321-51, 13-29-4, 13-250-5, 13-256-3, 13-146-68 and HRS 190-4 and 187A-6-b, authorize the Chairperson to negotiate and enter into permit agreements, generally represented in attachment 7 and subject to AG approval, with conditions and access protocols that address resource protection measures, management, that also permit watching of aquatic life, with terms less than one year, with commercial drift-in snorkel and scuba operators, that include permit fees of \$3 per guest per day (permit revenue to be divided as follows: first, cover costs and expenses related to the resource ranger stationed at Kealakekua Bay, kayak mooring buoy maintenance and operation and maintenance of portable toilets, other associated costs in the Bay, then, any balance to be divided 1/4 - 1/4 - 1/4 - 1/4 between DAR, DOBOR, Parks and DOCARE.) Permittee shall be required to conduct safety and natural & cultural resource briefings prior to guests entering the water at Kealakekua Bay.

- 14) Authorize the department to evaluate the existing permitting of Fair Wind Cruises and other moorings in the Bay, and return to the board prior to the expiration of their existing permits with recommendations on subsequent disposition of permits.
- 15) Authorize the chairperson to conduct a public process, with first consideration to non-profit entities, for a permit for rental of up to 25 kayaks, at Napoopoo Landing, for use within Kealahou Bay. In the event that no non-profit entities qualify or negotiations do not materialize, the department is authorized to issue a RFP to for-profit entities.
- 16) Authorize the department to work with the commercial entities within the Bay (kayak, drift-in, mooring users) to establish an appropriate number of users in the bay at any given time. Further, authorize the chairperson to monitor and be authorized to make immediate adjustments during the term of the permits to the number of users within the bay, as necessary to protect the bay's resources and to mitigate user conflicts.
- 17) Require the department to report back to the Board periodically to update the Board on the status of Kealahou Bay and if necessary provide additional recommendations including amendments to the recommendations proposed in this submittal.
- 18) Any other commercial ocean recreational activity within Kealahou Bay is subject to Land Board approval.
- 19) The dispositions and rules changes contained within this submittal are contingent upon approval by the State Attorney General's office.

Respectfully submitted,

DANIEL S. QUINN
Administrator, Division of State Parks

DAN POLHEMUS
Administrator, Division of Aquatic Resources

RICHARD RICE
Administrator, Division of Boating and Ocean Recreation

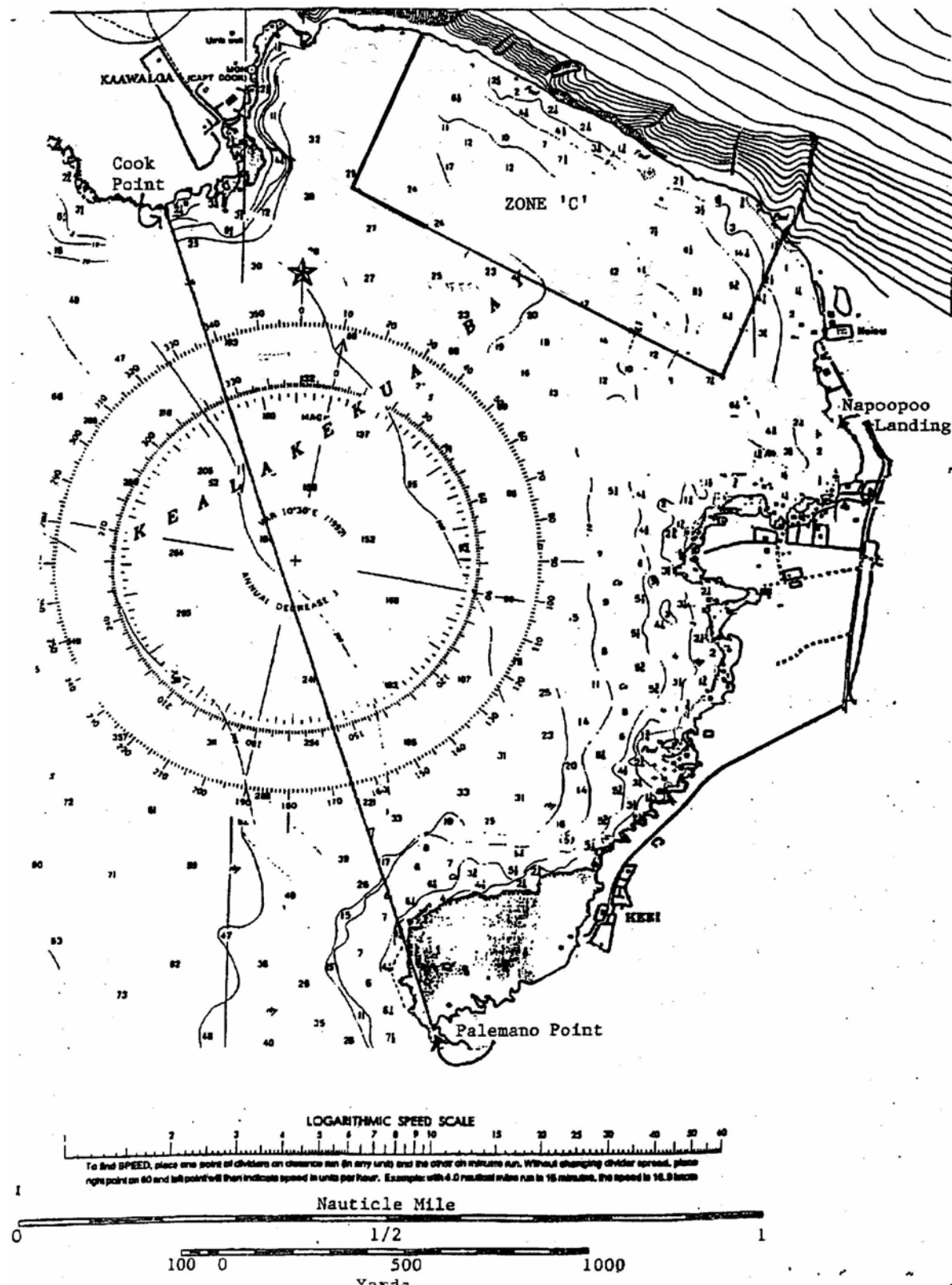
GARY MONIZ
Administrator, Division of Conservation and Resource
Enforcement

MELANIE CHINEN
Administrator, Division of Historic Preservation

APPROVED FOR SUBMITTAL:

PETER T. YOUNG
Chairperson

Attachment 1 (Representative location of Zone C – Kapu Area)



Attachment 2

DRAFT HAR amendments to the Kealakekua Bay MLCD, Chapter 13-29-1 and 13-29-2

(HAR being repealed are in brackets and stricken. New material is indicated by underscoring.)

§13-29-1 Boundaries. The Kealakekua Bay Marine Life Conservation District, subzones A ~~[and]~~, B, and C shall include that portion of the submerged lands and overlying waters of Kealakekua bay beginning at the highwater mark at the shoreline and those lands described in the survey description entitled “Kealakekua Bay Marine Life Conservation District, subzones A ~~[and]~~, B, and C, situated in the offshore waters of Kaawaloa, Kealakekua, Kiloa, Waipunala, Kalama 1, 2, 4, and 5, Liloa, and Kahauloa 1, South Kona, Island of Hawaii” and as identified as C.S.F. No. 15,832, dated April 23, 1969, on file with the departments of land and natural resources, and accounting and general services, and delineated in “Map of the Kealakekua Bay Marine Life Conservation District, Hawaii 4/23/69” attached at the end of this chapter. [Eff: MAY 26 1981] (Auth: HRS §1903)(Imp: HRS §§190-1, 190-2, 190-3)

§13-29-2 Prohibited activities. No person shall engage in the following activities in the Kealakekua Bay Marine Life Conservation District:(1) Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and opihi, live coral, algae or limu, or other marine animal, or other marine life, or eggs thereof; or (2) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature, or specimen; or (3) Posses any prohibited fishing gear within subzone A and B and on the immediate shoreline adjacent; or (4) Snuba; or (5) Conduct introductory/training SCUBA dives; or (6) Enter subzone C; or (7) Launch or land any vessel at Kaawaloa provided, that this shall not apply to persons engaged in rescue operations, maintenance, enforcement activities, activities of department personnel or in case of emergency requiring such action as may be necessary to prevent loss of life or destruction of property. [Eff: May 26 1981] (Auth: HRS §190-3) (Imp: HRS §§190-1, 190-3)

Attachment 3

DRAFT HAR amendments to the Kealakekua Bay Ocean Waters, Chapter 13-244-30

(HAR being repealed are in brackets and stricken. New material is indicated by underscoring.)

HAR §13-244-30 Kealakekua Bay ocean waters. (a) Definition. "Kealakekua Bay ocean waters" means the subzones A ~~[and]~~, B and C as shown on State of Hawaii map C.S.F. No. 15832 on file with the office of the state surveyor, department of accounting and general services, State of Hawaii. A copy of which is designated Exhibit "A" attached hereto and made a part hereof. (b) Restrictions. No person shall operate, anchor or moor any vessel in such manner as will injure or damage any marine life or geological features and specimens within the Kealakekua Bay ocean waters. Without limiting the generality of the foregoing, no person shall anchor or moor any vessel within subzone A, except at locations or mooring buoys designated by the department; No person shall snuba within the Kealakekua Bay ocean waters; No person shall conduct introductory/training SCUBA dives within the Kealakekua Bay ocean waters; No person shall enter into subzone C; No person shall launch or land any vessel at Kaawaloa provided, that this paragraph shall not apply to persons engaged in rescue operations, maintenance, enforcement activities, activities of department personnel or in case of emergency requiring such action as may be necessary to prevent loss of life or destruction of property or persons possessing permits described in HAR 13-29-4. [Eff 2/24/94] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24).

DRAFT HAR Kealakekua Bay Restricted Zones, Chapter 13-256-165

(HAR being repealed are in brackets and stricken. New material is indicated by underscoring.)

13-256-165 Kealakekua Bay Restricted Zones. (a) Kealakekua Bay Restricted Zones means the areas confined by the boundaries shown on Exhibit "OOO", titled "Kealakekua Bay Restricted Zone," dated _____, and located at the end of this subchapter. The boundaries are:

(b) Zone A.

(1) As shown on State of Hawaii map C.S.F. No. 15832 on file with the office of the state surveyor, department of accounting and general services, State of Hawaii. A copy of which is designated Exhibit "A" attached hereto and made a part hereof.

(2) Restrictions. No person shall operate, anchor or moor any vessel in such manner as will injure or damage any marine life or geological features and specimens within Zone A including the launching or landing of any vessel at Kaawaloa. Without limiting the generality of the foregoing, no person shall anchor or moor any vessel within Zone A, except at locations or mooring buoys designated by the department; No person shall snuba within Zone A; No person shall conduct introductory/training SCUBA dives within Zone A.

(c) Zone B.

(1) As shown on State of Hawaii map C.S.F. No. 15832 on file with the office of the state surveyor, department of accounting and general services, State of Hawaii. A copy of which is designated Exhibit "A" attached hereto and made a part hereof.

(2) Restrictions. No person shall operate, anchor or moor any vessel in such manner as will injure or damage any marine life or geological features and specimens within Zone B; No person shall snuba within Zone B; No person shall conduct introductory/training SCUBA dives within Zone B.

(d) Zone C.

(1) Beginning at a point in the water at GPS XXX at Napoopoo landing, then in straight northwesterly direction in the line of sight to the Captain Cook monument to a point at approximately GPS XXX, then to the shoreline at GPS XXX, then in an easterly direction along the shoreline back to the point of origin.

(2) Restrictions. This area is designated as a restricted zone. Entry by any means is prohibited.

(3) Exceptions. Restrictions for Zones A, B and C shall not apply to persons engaged in rescue operations, maintenance, enforcement activities, activities of department personnel or in case of emergency requiring such action as may be necessary to prevent loss of life or destruction of property; or persons possessing permits described in HAR 13-29-4.

Attachment 5 - Recent Community Meetings Attended by DLNR staff

5/12/05 - Community Meeting
5/17/05 - County Meeting
5/27/05 - Kayak Meeting
6/09/05 - Community Meeting. (Staff also did a site inspection with the community)
6/18/05 - Meeting
8/05/05 - Community Meeting
9/04/05 – Operators Meeting
9/06/05 – Community Meeting
9/14/05 - Governors Advisory Meeting

Attachment 6

KEALAKEKUA BAY COMMERCIAL ACTIVITY PERMIT (KAYAKS)

The Board of Land and Natural Resources (Board) has adopted a policy and has directed the Department of Land and Natural Resources (Department) to implement the following "Policy for Commercial Activities" as it relates to a hierarchy of uses. The Department, when considering commercial activity proposals or management actions on state-owned lands and waters, will use the following hierarchy of priorities:

- a) Natural or Cultural Resources - The highest priority should go to the conservation of the resource. Only if an activity can be done in a way that does not unduly damage the resource, should it be allowed.
- b) General Public - If use or activity by the public can be done without undue damage to the resource, it should be the next priority.
- c) Commercial Activities - Commercial activities should be considered only if their impacts do not impinge on the resource, #a above, or use by the general public, #b, above.

The policy suggests commercial activities - operations of small & large businesses - are possible (as long as they do not unduly damage the resources.) It also suggests if the resources are unduly damaged, the commercial activities will be the first to be further restricted or eliminated. If public and commercial activities are occurring, and resource impacts indicate that restrictions or controls need to be imposed, these should first be levied on commercial operators. The general public is the last group to have restrictions and controls imposed on them.

Name of Permittee _____

Name of Responsible Person _____

Address of Permittee _____

Telephone Number _____

Permitted Activity: Kayaking tours in Kealakekua Bay following rules set forth in the West Hawaii ORMA, Kealakekua Bay Ocean Waters and Kealakekua Bay Marine Life Conservation District as existing as well as proposed rules approved by the Board of Land and Natural Resources on September 23, 2005.

Maximum Daily Number of Guests _____ Maximum Daily Number of Kayaks _____

Launch and Land at Napoopoo Landing only. No Parking at Napoopoo Landing.

Permit Fee: \$5.00 Daily Per Guest , payable monthly

Permit Commencement Date: _____ Expiration Date: _____

This Permit is subject to all the terms and conditions attached hereto. A violation of any one of these conditions is grounds for immediate revocation of this Permit.

Permittee (Authorized person to sign
on behalf of the Permittee)

Chairperson, Board of
Land and Natural Resources

QUALIFICATIONS FOR COMMERCIAL ACTIVITY PERMIT:

- (1) Permittee, at a minimum, shall meet the following criteria to qualify and hold a Permit for commercial activity at the premises:
 - i. Be a duly organized business in good standing in the state or an individual over the age of eighteen;
 - ii. Hold a current Hawaii State General Excise Tax License;
 - iii. Hold a current Hawaii State Tax Clearance Certificate;
 - iv. Have no outstanding complaint or unpaid fines for violations of any laws and rules administered by the Board. The Board may deny or terminate a Permit if the applicant/holder, its principals, subsidiaries or affiliates have a record of violations of any laws, rules, or permit conditions administered by the Board.
- (2) Depending on the type of commercial activity proposed, the Board and/or Department may require other qualifications for Permit applicants.

PERMIT TERM:

- (1) This permit expires on the expiration date as noted on this Permit and there shall be no presumption or implication of the right to renew.
- (2) This Permit is not renewable. Continuation of commercial activities beyond the term of this Permit requires issuance of a new Permit.
- (3) This Permit may be cancelled without prior notice when:
 - i. An emergency is declared by the Department of Land and Natural Resources or other proper authority; or
 - ii. The permitted activity poses an immediate threat to the health, safety and welfare of the general public and/or natural environment.
- (4) Any other provision notwithstanding, this Permit may be cancelled upon thirty days written notice to the Permittee when:
 - i. The Permittee violates any Permit condition;
 - ii. The permitted activity damages or threatens to damage the integrity or condition of the premises or the surrounding environment; or
 - iii. The permitted activity poses a threat to the health, safety or welfare of the general public or otherwise negatively impacts the general public's use and enjoyment of the premises or surrounding lands.

GENERAL PERMIT CONDITIONS:

- (1) With this completed and signed Permit, Permittee is granted the temporary privilege to conduct the commercial activity under the terms and conditions described herein. This is not an exclusive right to occupy and use the premises. Permittee shall not restrict or infringe on the public's opportunity to use and enjoy these public resources.
- (2) Permittee shall carry this Permit and shall produce it upon request.
- (3) All employees of Permittee who are on the premises shall wear, in a clearly visible location on their body of clothing, a nametag identifying the name of the employee and the name of the Permittee.
- (4) No signage noting the Permittee or the activity permitted under this Permit is permitted on the premises.
- (5) No financial transactions may be conducted on the premises.
- (6) This Permit is not transferable or assignable.
- (7) This Permit does not grant or constitute a vested property interest, but is a privilege granted for the use of the premises for a specified activity and time period.

- (8) This Permit does not grant any right or interest to occupy or possess the premises or the right to exclude others from the premises. Permittee shall not displace the public or block off, rope off or otherwise restrict public use or access to the premises. Public access shall not be obstructed or interfered with in any way.
- (9) Permittee shall comply with all applicable laws, rules and regulations of the federal, state, municipal and county governments. This Permit does not grant any other approvals that may be required of the Permittee for the permitted activity, nor does it exempt the Permittee or permitted activity from any applicable laws, rules, ordinances, and regulations of any federal, state, municipal, or county governments.
- (10) The Permittee agrees to indemnify, defend and hold the State of Hawaii harmless from and against any claims or demand for loss, liability or damage, including claims for bodily injury, wrongful death or property damage, arising out of or relating to this Permit.
- (11) Permittee shall at all times have comprehensive general liability insurance in the minimum amount of \$1-million listing the State of Hawaii as an additional insured.
- (12) By the 10th day of the following month, Permittee shall provide the Department with the monthly permit fee, the prior month's guest count and sales reports that accurately and completely reflect the number of guests participating on tours granted by this permit and gross sales amounts associated with this Permit.

OPERATING CONDITIONS:

- (1) Permittee is limited to conducting permitted commercial activities between sunrise and sunset - weekdays only, not including holidays.
- (2) No operations of any kind on weekends or County, State or Federal holidays.
- (3) Tours will be run with a maximum of 8 guests assigned to 1 guide. No more than 6 guest kayaks (single, tandem and/or triple) assigned to 1 guide.
- (4) No rental or sales of kayaks or other equipment/materials or solicitation of rentals/tours on site – all tours must be prearranged off-site. No sales activity of any kind on-site.
- (5) No guest parking at the premises. All guests to park off-site and Permittee to shuttle guests.
- (6) No parking of Permittee equipment or trailers on the premises.
- (7) Unloading/loading limited to 30 minutes. Equipment shall be parked off-site of the premises after unloading and not moved on-site for loading until boats/kayaks are landing on shore.
- (8) No solicitation, signage, distribution or display of promotional material on-site.

HEALTH AND SAFETY CONDITIONS

- (1) All guides/instructors must be currently certified by the American Red Cross or American Heart Association in Cardio-Pulmonary Resuscitation techniques (CPR,) American Red Cross Lifeguard Training and Standard First Aid or other nationally recognized certification agency and any other certifications all as may be determined and required by the department. All guides must maintain a current CPR, First Aid and Water Safety certifications.
- (2) Each guide is to carry and be equipped with the following safety gear:
 - i. Strobe Light – On guide vest
 - ii. Light Sticks – (One with each guest Kayak)
 - iii. 50' Tow Line
 - iv. Dive Knife
 - v. Whistle
 - vi. Smoke Flare (Orange)
 - vii. 2 - Way Radio or cell phone (with direct communication with land-based operations.)
- (3) Permittee is responsible for cleanup and hauling away, and any costs associated therewith, of any trash resulting from the permit activity.

- (4) Permittee is required to remove litter accumulations in the Kaawaloa area four (4) times per year.
- (5) While guests are on/in the water, Permittee shall have at least 1 land-based personnel (on the premises) in constant radio or cell phone communication with the guides.
- (6) Prior to entering the water, Permittee shall give to each guest a land based safety briefing apprising them of the following:
 - i. Entering and exiting a kayak while on the water
 - ii. Righting a capsized kayak
 - iii. Purpose of each gear and importance of using life vests
 - iv. Proper paddling techniques including back paddling and steering
 Guests and guides prior to commencing on the tour shall practice these techniques.
- (7) If no public comfort stations or similar facilities are present at the site, including Kaawaloa, the Permittee shall provide at its sole cost and expense portable toilets or related facilities during the time the Permittee is present with guests at the premises including at Kaawaloa.

PROTECTION OF NATURAL AND CULTURAL RESOURCES

- (1) Prior to or at the initial contact at the premises, Permittee shall give to each guest a briefing apprising each the importance and significance of the area's natural and cultural resources. The briefing shall also summarize safe marine wildlife watching techniques and the need for compliance with the 50-yard approach limit (see below) and other state and federal marine wildlife rules and guidelines.
- (2) No one associated with the Permit (i.e. Permittee, guides or guests) shall allow any guides or guests to disturb any archaeological sites.
- (3) No one associated with the Permit shall touch or stand on corals.
- (4) No one associated with the Permit shall feed any marine species.
- (5) Permittee, guides and guests shall abide by The Marine Mammal Protection Act guidelines, rules, regulations, policies and procedures.
- (6) No one associated with the Permit may closely approach, interact or attempt to interact with marine mammals (whales, dolphins, porpoises, seals or sea lions.)
- (7) No one associated with the Permit may closely approach by any means (by way of watercraft, swimming or otherwise) within 50-yards or less of any marine mammal, except any humpback whale as per #9 below. If any person(s) associated with the Permit (i.e. Permittee, guides or guests) whether in watercraft or in the water, is approached within 50-yards or less by any marine mammal, except any humpback whale as per #9 below, the Permittee will ensure that all guides and guests avoid abrupt movements and try to move away. Under no circumstances should people try to feed, touch, pet, ride, swim with or chase wild dolphins.
- (8) No person (i.e. Permittee, guides or guests) at any time shall attempt to swim with, pet, touch or elicit a reaction from any marine mammal(s.)
- (9) All Permit operations must fully comply with all federal and state historic preservation and wildlife protection laws, rules and regulations, including the federal 100-yard humpback whale approach rule (50CFR224.103.)
- (10) Permit conditions herein do not attempt to be rule making to enforce the Marine Mammal Protection Act. The conditions are simply conditions of this agreement.

The following was taken from the NOAA webpages as noted at the end of this summary:

NOAA Fisheries Policy on Human Interactions With Wild Marine Mammals

The Marine Mammal Protection Act does not provide for a permit or other authorization process to view or interact with wild marine mammals, except for specific listed purposes such as scientific research.

Therefore, interacting with wild marine mammals should not be attempted and viewing marine mammals must be conducted in a manner that does not harass the animals.

NOAA Fisheries cannot support, condone, approve or authorize activities that involve closely approaching, interacting or attempting to interact with whales, dolphins, porpoises, seals or sea lions in the wild.

This includes attempting to swim with, pet, touch or elicit a reaction from the animals.

NOAA Fisheries believes that such activities constitute "harassment" as defined in the Marine Mammal Protection Act since they involve acts of pursuit, torment or annoyance that have the potential to injure or disrupt the behavioral patterns of wild marine mammals.

From a biological and management standpoint, the harassment of wild marine mammals by members of the public continues to be a concern for NOAA Fisheries.

Specifically, efforts by the public to closely approach, pet, touch, feed, swim with or otherwise interact with wild cetaceans, seals and sea lions during activities to view the animals in their natural habitat can lead to "harassment," an act that is illegal under the Marine Mammal Protection Act (MMPA).

The MMPA prohibits the "take" of marine mammals which is defined as "*to harass, hunt, capture or kill, or attempt to harass, hunt, capture or kill any marine mammal.*"

The term "harassment" is further defined as "any act of pursuit, torment or annoyance which-

Level A Harassment- has the potential to injure a marine mammal or marine mammal stock in the wild; or

Level B Harassment- has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

The MMPA does not provide exemptions to the "take" prohibition for viewing or interacting with wild marine mammals. Therefore, interacting with wild marine mammals should not be attempted, and viewing marine mammals must be conducted in a manner that does not "harass" or "take" the animals.

NOAA Fisheries believes that watching marine mammals in their natural habitat can be a positive way to promote conservation and respect for the animals.

Marine Mammal & Sea Turtle Viewing "Code of Conduct"

- 1. Remain at least 100 yards from humpback whales and 50 yards from other marine mammals (dolphins, other whale species and Hawaiian monk seals.)**
- 2. Observe turtles from a distance, do not attempt to touch, ride or feed them.**
- 3. Limit your time observing an animal to ½ hour.**
- 4. Marine mammals and sea turtles should not be encircled or trapped between boats or shore.**
- 5. If approached by a marine mammal or turtle, put the engine in neutral and allow the animal to pass. Boat movement should be from the rear of the animal.**

Pursuit and feeding of marine mammals is prohibited by federal law.

NOAA recommends these viewing guidelines.

However, these suggested guidelines do not replace federal or state law.

Responsible Viewing Guidelines

Keep a safe distance - Please do not chase, closely approach, surround, swim with or attempt to touch marine wildlife.

For humpback whales in Hawaii, federal regulations prohibit approaching closer than:

- 100 yards (90 m) when on the water
- 1,000 feet (300 m) when operating an aircraft

For other species of whales, dolphins and monk seals the recommended distance for observation is:

- 50 yards (45 m) when on the beaches or on the water
- 1,000 feet (300 m) when operating an aircraft

Additional guidelines include:

- Use extra caution in the vicinity of mothers and young and in other sensitive wildlife habitat such as feeding, nursing or resting areas.
- For sea turtles, please remember that feeding, touching or attempting to ride them can cause distress. Please observe from a distance and allow them a clear escape route to deeper water.
- Never entice marine wildlife to approach you.

The following contains portions from the NOAA website:

Interactions Between the Public and Wild Dolphins in the United States: Biological Concerns and the Marine Mammal Protection Act.

The Swim With Dolphin (SWD) programs in Hawaii do not appear to involve feeding of spinner dolphins, but rather encroach on the sensitive habitat areas that the dolphins use for resting and sheltering. Spinner dolphins hunt in large groups at night in the deep waters off shore; during the day, they enter the shallow coves and bays of the Hawaiian Islands to rest, socialize, care for their young, and escape predators. Several commercial operators and private citizens have discovered these resting areas and have made a practice of swimming with the dolphins. There is concern that these SWD activities are disturbing the behavior of the animals, and that they may abandon their historical resting areas due to human encroachment (NMFS 1995, Wursig 1996).

In 1994, the U.S. Congress amended the MMPA and defined the term "harassment" as:

"Any act of pursuit, torment, or annoyance which --

(1) has the potential to injure a marine mammal or marine mammal stock in the wild, (Level A harassment), or

(2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment). "

Thus, "harassment" can be an act of pursuit that has the potential to disturb behavior (i.e., Level B harassment). NMFS is concerned that SWD activities in the wild risk causing harassment to the dolphins since, by their nature, they pursue interactions with wild dolphins that can disrupt the animals' natural behavior.

In order to avoid harassment of wild dolphins, NMFS recommends that people observe them from a safe and respectful distance from on board a vessel, avoid approaching dolphins closer than 50 yards (150 feet or 45 meters), and use binoculars or telephoto lenses to get a good view of the animals. If people conduct dolphin watching at a distance and do not closely approach or chase (pursue) the animals, the potential for harassment should be minimized. However, if people closely approach wild dolphins within 50 yards and try to interact with or entice the animals to approach, the potential for harassment -and possibly injury- is high.

NMFS recognizes that there are situations where wild dolphins will approach people on their own accord, either out of curiosity or to ride the bow wave/surf the stern wake of a vessel underway.

If wild dolphins approach a vessel, NMFS recommends that the vessel maintain its course and avoid abrupt changes in direction or speed to avoid running over or injuring the animals. If wild dolphins approach a vessel that is stationary, the vessel should remain still to allow the dolphins to pass. If wild dolphins approach swimmers or divers, NMFS recommends that the people avoid abrupt movements and try to move away. Under no circumstances should people try to feed, touch, pet, ride or chase wild dolphins.

The MMPA carries both civil and criminal penalties for violations: the maximum civil penalty is \$10,000 and the maximum criminal penalty is \$20,000 and one year in jail.

http://www.nmfs.noaa.gov/prot_res/MMWatch/MMViewing.html#policy
http://www.nmfs.noaa.gov/prot_res/MMWatch/hawaii.htm

Attachment 7

KEALAKEKUA BAY COMMERCIAL ACTIVITY PERMIT (DRIFT-IN SNORKEL/SCUBA)

The Board of Land and Natural Resources (Board) has adopted a policy and has directed the Department of Land and Natural Resources (Department) to implement the following "Policy for Commercial Activities" as it relates to a hierarchy of uses. The Department, when considering commercial activity proposals or management actions on state-owned lands and waters, will use the following hierarchy of priorities:

- a) Natural or Cultural Resources - The highest priority should go to the conservation of the resource. Only if an activity can be done in a way that does not unduly damage the resource, should it be allowed.
- b) General Public - If use or activity by the public can be done without undue damage to the resource, it should be the next priority.
- c) Commercial Activities - Commercial activities should be considered only if their impacts do not impinge on the resource, #a above, or use by the general public, #b, above.

The policy suggests commercial activities - operations of small & large businesses - are possible (as long as they do not unduly damage the resources.) It also suggests if the resources are unduly damaged, the commercial activities will be the first to be further restricted or eliminated. If public and commercial activities are occurring, and resource impacts indicate that restrictions or controls need to be imposed, these should first be levied on commercial operators. The general public is the last group to have restrictions and controls imposed on them.

Name of Permittee _____

Name of Responsible Person _____

Address of Permittee _____

Telephone Number _____

Permitted Activity: Drift-in snorkel tours, in Kealakekua Bay, following rules set forth in the West Hawaii ORMA, Kealakekua Bay Ocean Waters and Kealakekua Bay Marine Life Conservation District as existing as well as proposed rules approved by the Board of Land and Natural Resources on September 23, 2005.

Vessel Capacity _____ Vessel Name _____ Vessel Registration # _____

Location of Permitted Activity: Kealakekua Bay

Permit Fee: \$3.00 Daily Per Guest, payable monthly

Permit Commencement Date: _____ Expiration Date: _____

This Permit is subject to all the terms and conditions attached hereto. A violation of any one of these conditions is grounds for immediate revocation of this Permit.

Permittee (Authorized person to sign
on behalf of the Permittee)

Chairperson, Board of
Land and Natural Resources

QUALIFICATIONS FOR COMMERCIAL ACTIVITY PERMIT:

- (1) Permittee, at a minimum, shall meet the following criteria to qualify and hold a Permit for commercial activity at the premises:
 - i. Be a duly organized business in good standing in the state or an individual over the age of eighteen;
 - ii. Hold a current Hawaii State General Excise Tax license;
 - iii. Hold a current Hawaii State tax clearance certificate;
 - iv. Have no outstanding complaint or unpaid fines for violations of any laws and rules administered by the Board. The Board may deny or terminate a Permit if the applicant/holder, its principals, subsidiaries or affiliates have a record of violations of any laws, rules, or permit conditions administered by the Board.
- (2) Depending on the type of commercial activity proposed, the Board and/or Department may require other qualifications for Permit applicants.

PERMIT TERM:

- (1) This permit expires on the expiration date as noted on this Permit and there shall be no presumption or implication of the right to renew.
- (2) This Permit is not renewable. Continuation of commercial activities beyond the term of this Permit requires issuance of a new Permit.
- (3) This Permit may be cancelled without prior notice when:
 - i. An emergency is declared by the Department of Land and Natural Resources or other proper authority; or
 - ii. The permitted activity poses an immediate threat to the health, safety and welfare of the general public and/or natural environment.
- (4) Any other provision notwithstanding, this Permit may be cancelled upon thirty days written notice to the Permittee when:
 - i. The Permittee violates any Permit condition;
 - ii. The permitted activity damages or threatens to damage the integrity or condition of the premises or the surrounding environment; or
 - iii. The permitted activity poses a threat to the health, safety or welfare of the general public or otherwise negatively impacts the general public's use and enjoyment of the premises or surrounding lands.

GENERAL PERMIT CONDITIONS:

- (1) With this completed and signed Permit, Permittee is granted the temporary privilege to conduct the commercial activity under the terms and conditions described herein. This is not an exclusive right to occupy and use the premises. Permittee shall not restrict or infringe on the public's opportunity to use and enjoy these public resources.
- (2) Permittee shall carry this Permit and shall produce it upon request.
- (3) All employees of Permittee who shall wear, in a clearly visible location on the body clothing, a nametag identifying the name of the employee and the name of the Permittee.
- (4) This Permit is not transferable or assignable.
- (5) This Permit does not grant or constitute a vested property interest, but is a privilege granted for the use of the premises for a specified activity and time period.
- (6) This Permit does not grant any right or interest to occupy or possess the premises or the right to exclude others from the premises. Permittee shall not displace the public or otherwise restrict public use or access. Public access shall not be obstructed or interfered with in any way.

- (7) Permittee shall comply with all applicable laws, rules and regulations of the federal, state, municipal and county governments. This Permit does not grant any other approvals that may be required of the Permittee for the permitted activity, nor does it exempt the Permittee or permitted activity from any applicable laws, rules, ordinances, and regulations of any federal, state, municipal, or county governments.
- (8) The Permittee agrees to indemnify, defend and hold the State of Hawaii harmless from and against any claims or demand for loss, liability or damage, including claims for bodily injury, wrongful death or property damage, arising out of or relating to this Permit.
- (9) Permittee shall at all times have comprehensive general liability insurance in the minimum amount of \$1-million listing the State of Hawaii as an additional insured.
- (10) By the 10th day of the following month, Permittee shall provide the Department with the monthly permit fee, the prior month's guest count and sales reports that accurately and completely reflect the number of guests participating on tours granted by this permit and gross sales amounts associated with this Permit.

OPERATING CONDITIONS:

- (1) Permittee is limited to conducting the commercial activities between sunrise and sunset - weekdays only, not including holidays.
- (2) No operations of any kind on weekends or County, State or Federal holidays.
- (3) For scuba operators, only certified ("card carrying") scuba divers are permitted to scuba in the Bay. No introductory or training scuba dives in the Bay.
- (4) No snuba activities are permitted in the Bay.

HEALTH AND SAFETY CONDITIONS

- (1) All guides/instructors must be currently certified by the American Red Cross or American Heart Association in Cardio-Pulmonary Resuscitation techniques (CPR,) American Red Cross Lifeguard Training and Standard First Aid or other nationally recognized certification agency and any other certifications all as may be determined and required by the department. All guides must maintain a current CPR, First Aid and Water Safety certifications.
- (2) Permittee is responsible for cleanup and hauling away, and any costs associated therewith, of any trash resulting from the Permittee activity.
- (3) Permittee is required to remove litter accumulations in the Kaawaloa area four (4) times per year.
- (4) Prior to entering the water, Permittee shall give to each guest a safety briefing (including boating and ocean safety).
- (5) If no public comfort stations or similar facilities are present at the site, including Kaawaloa, the Permittee shall provide at its sole cost and expense portable toilets or related facilities during the time the Permittee is present with guests at the premises, including at Kaawaloa.

PROTECTION OF NATURAL AND CULTURAL RESOURCES

- (1) Prior to or at the initial contact at the premises, Permittee shall give to each guest a briefing apprising each the importance and significance of the area's natural and cultural resources. The briefing shall also summarize safe marine wildlife watching techniques and the need for compliance with the 50-yard approach limit (see below) and other state and federal marine wildlife rules and guidelines.
- (2) No one associated with the Permit (i.e. Permittee, guides or guests) shall allow any guides or guests to disturb any archaeological sites.

- (3) No one associated with the Permit shall touch or stand on corals.
- (4) No one associated with the Permit shall feed any marine species.
- (5) Permittee, guides and guests shall abide by The Marine Mammal Protection Act guidelines, rules, regulations, policies and procedures.
- (6) No one associated with the Permit may closely approach, interact or attempt to interact with marine mammals (whales, dolphins, porpoises, seals or sea lions.)
- (7) No one associated with the Permit may closely approach by any means (by way of watercraft, swimming or otherwise) within 50-yards or less of any marine mammal, except any humpback whale as per #9 below. If any person(s) associated with the Permit (i.e. Permittee, guides or guests) whether in watercraft or in the water, is approached within 50-yards or less by any marine mammal, except any humpback whale as per #9 below, the Permittee will ensure that all guides and guests avoid abrupt movements and try to move away. Under no circumstances should people try to feed, touch, pet, ride, swim with or chase wild dolphins.
- (8) No person (i.e. Permittee, guides or guests) at any time shall attempt to swim with, pet, touch or elicit a reaction from any marine mammal(s.)
- (9) All Permit operations must fully comply with all federal and state historic preservation and wildlife protection laws, rules and regulations, including the federal 100-yard humpback whale approach rule (50CFR224.103.)
- (10) Permit conditions herein do not attempt to be rule making to enforce the Marine Mammal Protection Act. The conditions are simply conditions of this agreement.

The following was taken from the NOAA webpages as noted at the end of this summary:

NOAA Fisheries Policy on Human Interactions With Wild Marine Mammals
<p>The Marine Mammal Protection Act does not provide for a permit or other authorization process to view or interact with wild marine mammals, except for specific listed purposes such as scientific research.</p> <p>Therefore, interacting with wild marine mammals should not be attempted and viewing marine mammals must be conducted in a manner that does not harass the animals.</p> <p>NOAA Fisheries cannot support, condone, approve or authorize activities that involve closely approaching, interacting or attempting to interact with whales, dolphins, porpoises, seals or sea lions in the wild.</p> <p>This includes attempting to swim with, pet, touch or elicit a reaction from the animals.</p> <p>NOAA Fisheries believes that such activities constitute "harassment" as defined in the Marine Mammal Protection Act since they involve acts of pursuit, torment or annoyance that have the potential to injure or disrupt the behavioral patterns of wild marine mammals.</p>

From a biological and management standpoint, the harassment of wild marine mammals by members of the public continues to be a concern for NOAA Fisheries.

Specifically, efforts by the public to closely approach, pet, touch, feed, swim with or otherwise interact with wild cetaceans, seals and sea lions during activities to view the animals in their natural habitat can lead to "harassment," an act that is illegal under the Marine Mammal Protection Act (MMPA).

The MMPA prohibits the "take" of marine mammals which is defined as "*to harass, hunt, capture or kill, or attempt to harass, hunt, capture or kill any marine mammal.*"

The term "harassment" is further defined as "any act of pursuit, torment or annoyance which-

Level A Harassment- has the potential to injure a marine mammal or marine mammal stock in the wild; or

Level B Harassment- has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

The MMPA does not provide exemptions to the "take" prohibition for viewing or interacting with wild marine mammals. Therefore, interacting with wild marine mammals should not be attempted, and viewing marine mammals must be conducted in a manner that does not "harass" or "take" the animals.

NOAA Fisheries believes that watching marine mammals in their natural habitat can be a positive way to promote conservation and respect for the animals.

Marine Mammal & Sea Turtle Viewing "Code of Conduct"

- 1. Remain at least 100 yards from humpback whales and 50 yards from other marine mammals (dolphins, other whale species and Hawaiian monk seals.)**
- 2. Observe turtles from a distance, do not attempt to touch, ride or feed them.**
- 3. Limit your time observing an animal to ½ hour.**
- 4. Marine mammals and sea turtles should not be encircled or trapped between boats or shore.**
- 5. If approached by a marine mammal or turtle, put the engine in neutral and allow the animal to pass. Boat movement should be from the rear of the animal.**

Pursuit and feeding of marine mammals is prohibited by federal law.

NOAA recommends these viewing guidelines.

However, these suggested guidelines do not replace federal or state law.

Responsible Viewing Guidelines

Keep a safe distance - Please do not chase, closely approach, surround, swim with or attempt to touch marine wildlife.

For humpback whales in Hawaii, federal regulations prohibit approaching closer than:

- 100 yards (90 m) when on the water
- 1,000 feet (300 m) when operating an aircraft

For other species of whales, dolphins and monk seals the recommended distance for observation is:

- 50 yards (45 m) when on the beaches or on the water
- 1,000 feet (300 m) when operating an aircraft

Additional guidelines include:

- Use extra caution in the vicinity of mothers and young and in other sensitive wildlife habitat such as feeding, nursing or resting areas.
- For sea turtles, please remember that feeding, touching or attempting to ride them can cause distress. Please observe from a distance and allow them a clear escape route to deeper water.
- Never entice marine wildlife to approach you.

The following contains portions from the NOAA website:

Interactions Between the Public and Wild Dolphins in the United States: Biological Concerns and the Marine Mammal Protection Act.

The Swim With Dolphin (SWD) programs in Hawaii do not appear to involve feeding of spinner dolphins, but rather encroach on the sensitive habitat areas that the dolphins use for resting and sheltering. Spinner dolphins hunt in large groups at night in the deep waters off shore; during the day, they enter the shallow coves and bays of the Hawaiian Islands to rest, socialize, care for their young, and escape predators. Several commercial operators and private citizens have discovered these resting areas and have made a practice of swimming with the dolphins. There is concern that these SWD activities are disturbing the behavior of the animals, and that they may abandon their historical resting areas due to human encroachment (NMFS 1995, Wursig 1996).

In 1994, the U.S. Congress amended the MMPA and defined the term "harassment" as:

"Any act of pursuit, torment, or annoyance which --

(1) has the potential to injure a marine mammal or marine mammal stock in the wild, (Level A harassment), or

(2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment). "

Thus, "harassment" can be an act of pursuit that has the potential to disturb behavior (i.e., Level B harassment). NMFS is concerned that SWD activities in the wild risk causing harassment to the dolphins since, by their nature, they pursue interactions with wild dolphins that can disrupt the animals' natural behavior.

In order to avoid harassment of wild dolphins, NMFS recommends that people observe them from a safe and respectful distance from on board a vessel, avoid approaching dolphins closer than 50 yards (150 feet or 45 meters), and use binoculars or telephoto lenses to get a good view of the animals. If people conduct dolphin watching at a distance and do not closely approach or chase (pursue) the animals, the potential for harassment should be minimized. However, if people closely approach wild dolphins within 50 yards and try to interact with or entice the animals to approach, the potential for harassment -and possibly injury- is high.

NMFS recognizes that there are situations where wild dolphins will approach people on their own accord, either out of curiosity or to ride the bow wave/surf the stern wake of a vessel underway.

If wild dolphins approach a vessel, NMFS recommends that the vessel maintain its course and avoid abrupt changes in direction or speed to avoid running over or injuring the animals. If wild dolphins approach a vessel that is stationary, the vessel should remain still to allow the dolphins to pass. If wild dolphins approach swimmers or divers, NMFS recommends that the people avoid abrupt movements and try to move away. Under no circumstances should people try to feed, touch, pet, ride or chase wild dolphins.

The MMPA carries both civil and criminal penalties for violations: the maximum civil penalty is \$10,000 and the maximum criminal penalty is \$20,000 and one year in jail.

http://www.nmfs.noaa.gov/prot_res/MMWatch/MMViewing.html#policy
http://www.nmfs.noaa.gov/prot_res/MMWatch/hawaii.htm